

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

JAMES E. COOKE

Defendant

) CRIMINAL ACTION NUMBERS
)
) IN-05-06-1529 thru IN-05-06-1533 and
) IN-05-06-2390 thru IN-05-06-2394
)
) ID No. 0506005981
)

SENTENCING DECISION

***Before the Honorable Jerome O. Herlihy
June 6, 2007***

Steve P. Wood, Esquire, Deputy Attorney General, Diane C. Walsh, Deputy Attorney General, and Danielle J. Brennan, Esquire, Department of Justice, attorneys for State of Delaware

J. Brendan O'Neill, Esquire, and Kevin J. O'Connell, Esquire, of Wilmington, Delaware, attorneys for the defendant

HERLIHY, Judge

On March 8, 2007, the jury found defendant James Cooke guilty of intentional murder, felony rape/murder and rape in the first degree. Because of these verdicts, a penalty hearing was conducted. The same jury on March 21, 2007 unanimously voted to recommend that the death penalty be imposed.

Jury selection for this case began on January 23, 2007 and concluded on January 30th. The evidence presentation started on February 2 and concluded on February 28th. The jury was given its guilt phase instructions on March 5th. It returned with its verdict on March 8th. The penalty hearing evidence began on March 13th and finished on March 16th. The jury was given penalty hearing instructions on March 19th. On March 21st it came back with its sentencing recommendation.

Charges

Cooke was indicted for the following offenses:

Count I - the charge of intentional murder of Lindsey Bonistall;

Count II - the charge of felony murder (rape/murder) of Lindsey Bonistall;

Count III - the charge of rape first degree involving Lindsey Bonistall;

Count IV - the charge of burglary first degree involving Lindsey Bonistall's apartment and the rape charge;

Count V - the charge of arson first degree involving the apartment building in which Bonistall's apartment was located;

Count VI - the charge of reckless endangering first degree relating to that apartment building;

Count VII - the charge of burglary second degree involving the residence of Amalia Cuadra;

Count VIII - the charge of robbery second degree and the alleged victim is Amalia Cuadra;

Count IX - the charge of theft (misdemeanor) involving the property of Amalia Cuadra;

Count X - the charge of burglary second degree relating to the residence of Cheryl Harmon; and

Count XI - the charge of theft (misdemeanor) involving the property of Cheryl Harmon.

Prior to trial, Cooke had moved to sever Counts VII through XI from the first six Counts. The basis for seeking severance was that he intended to plead not guilty to Counts VII - XI while pleading guilty, but mentally ill to the charges in Counts I - VI involving Lindsey Bonistall. The Court denied that motion.¹ At trial, he changed his plea to guilty, but mentally ill as to all eleven Counts. The jury's verdicts were guilty as to all charges.

The Charges

The focus of this decision, of course, is a determination of the appropriate sentence for the two murder first degree convictions. But the evidence on those charges is intertwined with the evidence relating to the remaining charges. The more understandable approach to all of the charges and to the evidence is to proceed chronologically.

¹ *State v. Cooke*, 909 A.2d 596 (Del. Super. 2006).

Cheryl Harmon lived in building 11 of the Towne Court Apartments, Newark, Delaware, in April 2005. She left her apartment around 7 a.m. on April 26th and returned around 11:30 p.m.² When she opened her apartment door, she saw bright red writing on her front living room wall. She backed out of her apartment noting a strong odor of fingernail polish. The writing she saw and more which was discovered elsewhere in her apartment had, most likely, been written with red fingernail polish. A living room window, previously locked, had been pried to gain entry. Various items were taken. But of special interest of the stolen objects were two things: a class ring with “Cheryl R. Harmon” engraved in cursive in it and a ring with “Cheryl” engraved in it.

The red nail polish writings were in large print. They were on two walls and on a door:

“I WHAT (sic) My Drug Money”

“We’ll Be Back”

“DON’T Mess With My Men”

There were no immediate suspects. On April 29, 2005, Amelia Cuadra was living at 209 W. Park Place in Newark, which is not too far from Harmon’s residence. She is a graduate student in chemical engineering at the University of Delaware. She was asleep in the early morning when she sensed a flashlight shining in her face. At first, she thought

² That’s the time she gave at trial. At the time she reported the incident she told the police it was just after one a.m.

it was her house-mate, Carolina Bianco, who was home at that time. She called quietly “Carolina” (pronounced Caroleena) two times.

But then a male voice said, “Shut the (deleted) up or I’ll kill you.” “I know you have money. Give me you (deleted) money.” Cuadra got out of bed. She had a T-shirt and underwear on; she wrapped a blanket around her. The male was still shining the flashlight in her face and standing closer.

Cuadra walked over to her desk where her wallet was. When picking it up, she also apparently (inadvertently) picked up her cell phone. The man was now about two feet or less from her. She gave him some cash, maybe \$45.00. He then said, “Give me your (deleted) credit cards or I’ll kill you.” She did. They were an American Express card and a University of Florida VISA card (Cuadra had attended University of Florida as an undergraduate).

Somehow Cuadra had managed to press 911 on her cell phone. Around this time, the male intruder said, “Take off your (deleted) clothes or I’ll kill you.” He told her he had a weapon. At this point, Cuadra screamed out “Carolina” several times. Even though she had pressed 911, which appeared on the cell phone’s screen, she had not also pressed “send.” The intruder tried to get the phone from Cuadra. He probably saw the 911, and with her screaming for Carolina, he fled.

Cuadra described the male intruder as a light skin, African-American, in his late 20's or early 30's, around 5'6" or 5'7" (being 3 - 4" taller than she at 5'31/2"), chubby

or puffy cheeks, and wearing a gray hoodie and light blue pants. The hood was pulled over his head and down to near his eyebrows. He was wearing gray gloves, which had lighter and darker shades. After the man left, Cuadra called 911. Carolina Bianco's cell phone was taken. Cuadra's light blue/grayish Jansport backpack was also taken, but the intruder had gone through it first and removed some of her research papers. The backpack had been in a chair next to the dining room table. The remaining, but now stolen, contents were an "iPod" and a metallic "tin looking" container which had diet pills in it. The backpack had her name tag on it, "Amalia Cuadra."

Entry to the apartment had been gained through a door to the laundry room.

When she called VISA a little while later, she was informed that someone had attempted to use her card at 4:19 that same morning. She passed that along to the Newark Police who determined that Cuadra's VISA card had been used - unsuccessfully - at a Wilmington Trust ATM on Elkton Road. This location was not far from her townhouse and the use was only a few hours after the incident at her residence. It also is not far from Cooke's then residence. The police were able to quickly retrieve a surveillance videotape from the ATM vestibule. They promptly developed some still photos from the video.

Cuadra came to the Newark Police station within a day or two to help develop a composite drawing of the intruder. She testified that she had some difficulty conveying to the sketch artist that the intruder was very light skinned.

While she was unsure if she saw them before or after she helped with the composite, she did see the surveillance photos. The man depicted in them had a hooded jacket over his head the way her intruder did and was wearing light gloves similar to the ones the intruder wore. Upon seeing the photos, she was pretty sure the man depicted was the intruder in her residence. There was, however, no immediate suspect.

In April - May, 2005, Rochelle Campbell lived at 9 Lincoln Drive in Newark. She lived there with four children, three of whom were by the defendant. She was pregnant and due in June, with a fourth child of his. She had known Cooke for about ten years since first meeting him in Salem, New Jersey. In the period of April and May, Cooke stayed at 9 Lincoln Drive about two-thirds of the time. At this time he was thirty-four years old.

Early in the evening of the April 29th she, the children, and Cooke were watching television. She fell asleep but then went upstairs to bed. Several hours later, she came downstairs. Cooke was there. She saw a panty liner and a backpack. It had a name tag on it with "Amalia" and a Spanish last name. Cooke told her he had taken it at an accident scene when the participants were not looking.

In Campbell's presence, Cooke removed the contents which included a cell phone, an "iPod," receipts and some diet pills in a silver and black metal container. She suggested that he call one of the numbers on the cell phone and return it. He did not. She believes she saw Cooke with two credit cards. He said he was going to use one

rejecting her request not to. He speculated that the credit card PIN number may be on the receipts in the backpack.

Campbell told him to take away the backpack along with the credit cards and not bring them back. He left. When he came back, he did not have the backpack, nor did she see the credit cards again. He told Campbell he had tried to use a credit card but it would not work. Campbell later saw the ATM pictures and said they showed Cooke. The Wilmington Trust ATM is about a half mile from 9 Lincoln Drive.

The back of 9 Lincoln Drive is across from Towne Court Apartments. It is very close to the apartment where Cheryl Harmon lived in Building 11, and to the apartment where Lindsey Bonistall lived in Building 12. Building 12 has twelve apartments in it. As of April 30 - May 1, 2005, eight of those 12 apartments were occupied. Lindsey Bonistall had a roommate, Christina Bush, who was away camping with her father on that night. Cooke was at the 9 Lincoln Drive residence during the day on May 1st, but Campbell does not know where he was during the evening.

Sometime around 2 a.m. on May 1st, Cooke climbed up the balcony in the Bonistall apartment. Apparently, he stepped on a meter box to make the climb; the balcony is easily reached by using it. It would appear he was able to "jiggle" open the poorly locked patio door leading into the apartment's living room. No fingerprints were found on the balcony railing or on the door, but glove type impressions were left on the railing.

Lindsey Bonistall, a University of Delaware sophomore, was present. She had been out earlier visiting with some school mates. While with them, she smoked some marijuana. She left them around 1 a.m. When these friends last saw her, she was wearing sweat pants, a University of Delaware sweatshirt, a blue “beer” cap, and flip flops. There were no stains on any of this clothing. Bonistall was due at her job at Home Grown in Newark the next morning, Sunday. The precise sequence of events once Cooke was in the apartment is not known. The condition of Bonistall’s body, when later found, indicated she was still dressed in her sweat pants and sweatshirt that she had been wearing an hour or so before when with her friends. At some point, Cooke hit Bonistall hard at least twice, once around the left eye and the other on her chin. There was sufficient time for bruising to develop before she died.

Cooke tied up Bonistall with an electrical cord, ripped from an iron in her bedroom. He forcibly put a t-shirt gag into her mouth. Her visible teeth marks were in it and she did that before she died.³ There were injuries around and inside her mouth which indicate the gag was forcibly pushed in. Also there were injuries to Bonistall’s chest consistent with someone’s knees or body pressing firmly on it. Cooke placed another t-shirt, probably hers, around her neck, knotted it and strangled her to death.

Cooke raped Bonistall. DNA recovered from her vaginal area showed the odds of it being someone other than Cooke are 1 in 676,000,000,000,000,000 among African

³ State’s exhibits 119 and 155.

Americans.⁴ She apparently scratched him, too. Fingernail scrapings recovered from her, because of the mixture of his and her DNA, showed the chances of them being someone other than Cooke to be 1 in 1,640,000,000 among the African-American population.⁵ A FBI footwear examiner also testified he could not rule out boots of a brand sold by Payless as source of footwear imprints on a notebook on the floor in Bonistall's bedroom. Other brands could have made the impressions, however.

Bonistall's bed was all messed up, and in the sheets and in the jumbled bed covers, the police later recovered her flip flops and the "beer" cap. In her bedroom they recovered a small purple plastic flashlight⁶ which did not belong to Bonistall or her roommate.

At some point, Cooke removed a bleach bottle from a front hall closet. Bonistall's upper garments had bleach type stains on them as did the "beer cap" her friends had seen her wearing just an hour or so before. Her panties were similarly stained. A cap for a bleach bottle was found in the front hallway and a bleach bottle was found at the foot of Bonistall's bed. The cap fit the bottle. Possible bleach stains were found on the comforter on her bed. The medical examiner testified bleach can be used to destroy DNA.

⁴ State's exhibit 90.

⁵ State's exhibit 91.

⁶ State's exhibit 146.

It is likely Bonistall was killed in bed. In any event, after raping and then strangling her to death, Cooke moved her body to the bathtub in the apartment bathroom. He placed it in there face down. He put pillows, a basket, and her guitar on top of her. He set her and all of this on fire. While portions of her legs and back were badly burned, she was dead before the fire started.

Before starting the fire, however, he wrote (mostly printing) some things on the walls, a door, and the kitchen countertop:

“More Bodies Are going to be turn in (sic) up Dead”

“WHITE Power” (in two places)

“We Want Are (sic) weed back”

“KKK” (on a wall and on a kitchen countertop)

All of this was done in large letters apparently with a blue magic marker. It was all written before Cooke started the fire as soot covered most of the writings. Georgia Carter, a Delaware State Police Crime Lab document examiner testified, that her comparison of Cooke’s known writings and these “wall writings” led her to conclude there were “strong indicators” that Cooke “probably” did them. When attempting to get exemplars from Cooke, he told her, however, he did not print, but known documents the police obtained elsewhere showed he could print.⁷

⁷ *State v. Cooke*, 914 A.2d 1078 (Del. Super. 2007); State’s exhibit 73 - 77.

Cooke apparently found Bonistall's wallet. When in relation to her death is not known. He spread out her credit and ID cards in a nice playing card fashion on the kitchen counter. No prints were recovered, however.

The fire he started in the bathtub burned for quite a while until smoke came out of the apartment awakening residents, all of whom had to evacuate. The fire melted the walls above the bathtub some of which fell in covering her body. The local fire company was called and all the residents evacuated the two and a half story apartment building.

Campbell said Cooke did not own a car. He either rode the bus or his bike. Judy Romeo lives at 184 Madison Drive which is part of a row of townhouses. There is a parking lot in the back of her house. It abuts the Edna Dickey Park as does, on the opposite side several hundred feet away, Building 12 of the Towne Court Apartments. Sometime after 1:00 a.m. on the 1st, Romeo left her apartment to go out back to smoke. A man she said resembled Cooke rode by on a bike. His hair was in "corn rows," pulled back and he had braids like Cooke. When she went back inside she mentioned it to her son. A little while later, Romeo heard sirens. She went outside and saw flames and smoke coming from the Towne Court Apartments.

Aetna Hose and Ladder Company responded to the fire. After having some difficulty getting into the apartment, due to a draft created by the fire, firemen entered and put out the blaze. It was not until hours later that Bonistall's body was found under the ashes in the tub.

At 5:42 p.m. on May 2nd the Newark Police received a 911 call. As of that time, the Harmon, Cuadra, and Bonistall incidents described above had not been linked. Nor had the police released information about the wall writings in Harmon's apartment, her name, any information about Carolina's name or that Bonistall had been tied up.

Campbell⁸ later identified the caller as Cooke. At trial, she said Cooke disguised his voice using the voice he sometimes used when speaking to their young children. Among statements Cooke made in this tape linking him to the three incidents, and the incidents to each other, were references to Carolina (pronouncing it "Caroleena" as Cuadra had), "Cheryl,"⁹ *tying* up that girl, the murder, and KKK on Bonistall's apartment walls. Again, none of this had been public information.

Several days later in another 911 call to the Newark Police, Cooke (whose voice again Campbell identified) sent the police on a wild goose chase to Chester, Pennsylvania, to find the alleged murder culprits. He used the name in the call of "John Warn." He described himself as thirty-two and caucasian.

In early May, the police developed a wanted poster with a \$25,000 reward. The poster depicted the sketch drawing worked out by Cuadra and the police artist. It also showed four pictures from the ATM surveillance camera. The wanted poster was placed in stores and other locations in and around Newark.

⁸ See p. 6, *supra*.

⁹ See reference to two rings taken from her apartment with her name on them, p. 3.

One of those locations was the Payless Shoe store in Newark at College Square. Cooke worked there in early 2005. He worked several days a week in the stock room where he used a box cutter and gloves.¹⁰ To get to the stock room, he had to come in the front door. Cooke worked on April 28, 29, and May 3, 5, and May 10, 2005.¹¹

The Newark Police asked Diane Hannah, the store manager, to put up the original wanted poster.¹² It was distributed around Newark starting on May 4th. Hannah testified that when she got this version, she did not pay too much attention to it. She put it in the front of the store just to the right of the front door. The last day Cooke worked at Payless was May 10th. He was scheduled to work the rest of the week. But Cooke claimed his mother was sick and could not come in. He never returned to work. A day or two previous, the wanted poster had disappeared.

The police distributed a second wanted poster.¹³ It had the same earlier composite, but it now had six pictures from the ATM camera. One of the six appeared in the earlier poster but a new picture showed Cooke's left sneaker. The two new ATM pictures also showed Cooke walking toward and away from the ATM machine. Two of the pictures show him wearing gloves.

¹⁰ State's exhibit 63.

¹¹ State's exhibit 63.

¹² State's exhibit 64.

¹³ State's exhibit 56.

Hannah recognized some distinct features from the six ATM photographs on the second poster. One, she knew Cooke walked on his “tippy toes.” The pictures of Cooke walking to and away from the ATM would indicate a person walking on his tippy toes. Two, she said that she had seen Cooke wear sneakers like the ones in the ATM pictures.

Believing that the person in the wanted person was Cooke, she called James Jones. He is a training supervisor at the Prices Corner Payless Store and who had hired Cooke in the first place. Cooke started his employment at the Prices Corner store. Jones, like Hannah, had seen Cooke ride a bike to his work at the College Square store. Jones had also driven Cooke to other Payless Stores.

After Hannah’s call to him, Jones looked at the poster. He testified he recognized the person shown as Cooke. He recognized the gloves, which he had seen Cooke have at work; the sneakers, which appeared to be the Payless brand; the way his legs were bent; the “tippy toe” walking which he knew Cooke did because he had told him that he had been burned on his feet when younger; and Cooke’s facial profile.

The Newark Police were called and the investigation thereafter focused on Cooke.¹⁴ Cooke was arrested in Delaware in early June, 2005. He had something on him unrelated to these offenses but linking him to a crime in Atlantic City which will be covered later.¹⁵

¹⁴ Other persons who knew Cooke, such as Campbell, Jesse Sitz-Romeo’s son who had seen him in Dickey Park, Latoya Dowes, who lived on Madison Drive which abuts that park, all saw the poster and said it was Cooke based on their prior observations of him.

¹⁵ *Infra* pp. 40-41.

The defense to all the charges was guilty, but mentally ill.¹⁶ This defense is not what Cooke himself wanted as he himself said when testifying. Dr. Lawson Bernstein, a defense psychiatrist, also related that Cooke told him he was not mentally ill. Cooke stated several times he wanted to plead not guilty. This dispute was the subject matter of a writ of mandamus sought by the State.¹⁷

As factual support to the defense of guilty, but mentally ill, counsel called various witnesses. One was Ricky Patillo, Jr., who is a half-brother of Cooke's and is fourteen months younger. There were three other siblings in the household besides these two. Patillo said all of them moved twelve or more times as they were growing up; "no childhood home," is how he described it.

Ricky Patillo, Sr., Patillo, Jr.'s father, lived with Cooke's mother and the children for a while. Ricky, Sr., according to Ricky, Jr., treated Cooke worse than the others. He beat Cooke with hoses, switches and electrical cords. He cursed Cooke often and used demeaning words toward him.

Cooke's mother, Paula Turner, was nineteen when he was born on December 2, 1970, and he was born pre-mature around three and a half pounds.¹⁸ He was treated for

¹⁶ 11 *Del. C.* 401(b).

¹⁷ *In re Petition of State for a Writ of Mandamus*, 918 a.2d 1151 (Del. 2007).

¹⁸ Defendant's exhibit 5.

malnutrition when only a few months old.¹⁹ She was not a good provider nor were any of her revolving door boyfriends. The kids, Ricky, Jr. said, often had to fend for themselves. He and Cooke stole food and sometimes went through a diner's trash for doughnut remnants, but he also admitted Cooke committed burglaries or thefts for non-food items.²⁰ Cooke often went to school hungry. While Patillo testified that Turner "did the best she could," he recalled a time he kicked open a bathroom door (he was fifteen or sixteen) and found her on the floor with a needle in her arm and a strap around it. At one time, Turner was incarcerated and the kids lived with a grandmother.

Patillo described Cooke as a comic inside the family, but "strictly solo" outside it. Cooke was the "least loved" of the kids. Patillo recalls Cooke being in special education and being ridiculed with the name "short buzz" (for slow people). Cooke had a lot of trouble in school. He was involved in fights. He showed up in dirty and soiled (from urine) clothes. He was suspended many times. He had few friends.

Karlene Sorrell, a cousin, testified that Cooke was not getting love from Paula Turner. She never saw Cooke get hit, but she later saw welts and bruises from being hit. Turner's children, including Cooke, had unpleasant body odor, and not very good clothes. She described how Cooke became depressed and withdrawn after the death of one of his sons, Semaj (not a child of Campbell's).

¹⁹ Defendant's exhibit 6A.

²⁰ For a detailed description of his criminal record, see Attachment A.

Eleisa Cooke, his half-sister, testified. She is now thirty-seven. She reiterated what Patillo had said about the frequent moves made as they were growing up. Their mother, Turner, consumed illegal drugs and was often not around. Turner subjected Cooke to a lot of abusive name calling.

The most notable early childhood trauma, however, was when, apparently, Ricky Patillo, Sr., put Cooke's feet into a bathtub of scalding water. He was severely burned but Turner did not seek immediate treatment. This happened when he was just over two. For a time Cooke said a sibling dipped his feet in but that was not true. Ultimately, somehow, he was sent to the Children's Hospital of Philadelphia (CHOP).²¹ He was first seen in June 1973 and treated numerous times over the next year and a half, mostly for skin grafts and complications. And he was not well-nourished when he first was admitted. He has never completely healed. Patillo, Jr., and Eleisa reported the injuries prevented him from playing "normal" games with kids as he was growing up and caused him from then on to walk in a "tippy toe" manner; a condition which exists now.

The defense evidence in the guilt phase of the trial included voluminous records from the New Jersey Division of Youth and Family Services (DYFS).²² These records

²¹ Defendant's exhibit 7.

²² Defendant's exhibit 6. Because this exhibit and other defense exhibits (5, 7, 10, and 11) were examined by and relied upon by the defense mental status experts, they were provided in full to the State for its expert to examine. This explains why some records arguably helpful to the State and not the defendant, are cited in this opinion.

reveal a long history of abuse of Cooke, often by his mother and by others. They reveal his many delinquency findings and school disciplinary problems. At one point, he was placed in a foster home because things were so bad with Turner. One time after beating him, she brought Cooke to the DYFS office, admitted to beating him because of school problems and left him at the DYFS Office. Her abuse and neglect were documented in a complaint for temporary custody filed when Cooke was fourteen.²³ This led to a temporary removal from the “home.”

Dr. Alvin Turner, a psychologist visited, tested and examined Cooke. He saw him for about twenty hours over six occasions: January 20, February 3, February 17, April 14, April 21, and May 5, 2006. His ultimate diagnosis was that Cooke was suffering from a long-standing Schizotypal Personality Disorder (SPD).²⁴ This Disorder, Dr. Turner opined, at the time of the offenses substantially disturbed Cooke’s thinking, feeling, and behavior, and left him with insufficient willpower to exercise a conscious choice in doing a particular act or refraining from it.

The diagnostic criteria for this Disorder are:

- A. A pervasive pattern of social and interpersonal deficits marked by acute discomfort with, and reduced capacity for, close relationships as well as by cognitive or perceptual distortions and eccentricities of behavior, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) or the following:

²³ *Id.* at Bates #'s 001200-001203.

²⁴ *Diagnostic and Statistical Manual of Mental Disorders IV - TR*, American Psychiatric Association, 2000; DSM 301.22, p. 697.

- (1) ideas of reference (excluding delusions of reference)
 - (2) odd beliefs or magical thinking that influences behavior and is inconsistent with subcultural norms (e.g., superstitiousness, belief in clairvoyance, telepathy, or “sixth sense”; in children and adolescents, bizarre fantasies or preoccupations)
 - (3) unusual perceptual experiences, including bodily illusions
 - (4) odd thinking and speech (e.g., vague, circumstantial, metaphorical, overelaborate, or stereotyped)
 - (5) suspiciousness or paranoid ideation
 - (6) inappropriate or constricted affect
 - (7) behavior or appearance that is odd, eccentric, or peculiar
 - (8) lack of close friends or confidants other than first-degree relatives
 - (9) excessive social anxiety that does not diminish with familiarity and tends to be associated with paranoid fears rather than negative judgments about self
- B. Does not occur exclusively during the course of Schizophrenia, a Mood Disorder With Psychotic Features, another Psychotic Disorder, or Pervasive Developmental Disorder.²⁵

Dr. Turner said Cooke had a number of risk factors for this personality disorder starting from birth and through his youth. They included his premature birth (born prior to full brain development), early malnourished existence; the serious burning incident, physical abuse, including the burning incident, all for which Cooke feels much rage, including toward his mother; verbal abuse from his mother and paramours; physical and

²⁵ Defendant’s exhibit 17.

emotional neglect which can be extremely damaging to children; poor school performance; lack of intact home (moving twelve times, etc.); lack of nurturing; lack of a father figure; self-consciousness about his learning disabilities, especially being in special education; suffering sex abuse while in juvenile detention; parental favoritism to others; foster care; and seeing criminality of his mother and siblings. Further, Cooke had no resources to help him cope with or compensate for these things.

Dr. Turner discussed Bonistall's death with Cooke. Cooke, Dr. Turner testified, told him different things at different times. Some of the things he said were: that he had consensual sex with Bonistall, that she had that sex after smoking "wet;"²⁶ that Bonistall did not like it; that he got angry with her because she did not put her legs up while having sex; that she wanted to do it her way, not his; and that he recalled choking her while they were on her bed. Cooke also said he did not plan on this, that he did know why it was him, and that he could not believe it was happening. On cross-examination, Dr. Turner said Cooke told him he could sense evil in Bonistall, he knew her to be unhappy, and that she was not what people thought of her.

Dr. Turner also testified that Cooke at times denied saying any of this to him. He felt Cooke was "playing" with him. Paradoxically, all of these inconsistencies, Dr. Turner said, are consistent with SPD in that Cooke would go in and out of reality. He described

²⁶ "Wet" is marijuana which has been dipped or soaked in formaldehyde or PCP. A toxicology examination of Bonistall's blood revealed traces of marijuana but no formaldehyde or PCP. In short, there was no corroboration she had smoked "wet."

SPD as a “severe” “transient psychotic state.” It is characterized by impulsiveness where one becomes unable to control severe acting out behavior.

Dr. Turner reviewed the nine diagnostic criteria of SPD²⁷ and testified how Cooke exhibits all of them. Dr. Turner described how Cooke believes he is a “chosen person;” that Satan whispered things to him, but that he - Cooke - was an avenger of evil; that he believes he can predict the future; the senseless things he said to him; his distrust; his confessing to the murder of Bonistall; feeling shame from the sexual and child abuse he had suffered;²⁸ his flat affect but at times tearful; how he decides what to know or not know; lack of close friends and confidants; and lack of eye contact.

Dr. Turner testified about his review of Delaware Department of Correction records concerning an incident in early September 2005, three months after Cooke’s incarceration for these charges. A corrections officer observed Cooke writing on the wall of his cell with feces. He also saw Cooke take it from a cup and put it close to his mouth.²⁹ As a result of this, Cooke was taken to the infirmary. Department of Correction records³⁰ indicated the staff was concerned Cooke may kill himself, reported he was hearing a baby crying, and other matters. He was placed under close personal observation and prescribed

²⁷ *Supra* pp. 18-19.

²⁸ Dr. Turner said Cooke was tearful at times when discussing the abuse he had suffered. He testified, this is inconsistent with being anti-social.

²⁹ There is no report that Cooke ate his feces or that he became physically ill and/or had to be treated for ingestion of feces.

³⁰ Defendant’s exhibit 10.

anti-psychotic medication. He was diagnosed as suffering from a “psychosis not otherwise specified.”³¹ In sum, Dr. Turner said, another mental health provider was seeing psychotic episodes.

When cross-examined, Dr. Turner was asked about personality disorders. First, he said, the risk factors Cooke had as a person under 18 put him at risk for a personality disorder, not just SPD. Second, however, he opined that Cooke did not have Anti-Social Personality Disorder (ASPD) even though the risk factors he reviewed earlier put a young person at risk for ASPD, too.

He was asked about Cooke’s extensive criminal history, both as an adult and as a juvenile.³² He was asked about Cooke’s post-murder crimes in Atlantic City in early June 2005, a month after the murder.³³ He was also questioned about Cooke’s fathering ten children by seven different women. None of this changed his conclusion about his diagnosis of Cooke’s SPD.

The purpose of this cross-examination was to address the features of ASPD which Dr. Turner had ruled out. He was asked about psychological evaluations performed on Cooke while serving a jail sentence in New Jersey. Cooke was in his early 20's. Both

³¹ Defendant’s exhibit 10C.

³² *Supra.* p. 17, *infra.* pp.74-75.

³³ *Infra.* pp. 40-41.

psychologists noted his antisocial personality and specifically noted ASPD.³⁴ Dr. Turner noted, however, he was the first mental health provider to diagnose Cooke with SPD.

The State reviewed with Dr. Turner the diagnostic criteria for ASPD:

Diagnostic criteria for 301.7 Antisocial Personality Disorder

A. There is a pervasive pattern of disregard for and violation of the rights of others occurring since age 15 years, as indicated by three (or more) of the following:

- (1) failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest
- (2) deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure
- (3) impulsivity or failure to plan ahead
- (4) irritability and aggressiveness, as indicated by repeated physical fights or assaults
- (5) reckless disregard for safety of self or others
- (6) consistent irresponsibility, as indicted by repeated failure to sustain consistent work behavior or honor financial obligations
- (7) lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another

B. The individual is at least age 18 years.

C. There is evidence of Conduct Disorder with onset before age 15 years.

³⁴ State's exhibit 183.

D. The occurrence of antisocial behavior is not exclusively during the course of Schizophrenia or a Manic Episode.³⁵

Dr. Turner agreed that Cooke had a lot of criminal history but minimized any deceitfulness, agreed he was impulsive, had set fire to an apartment building, minimized the ASPD criterion of financial irresponsibility even though Cooke owed more than \$12,000.00 in back child support, showed some signs of violence, but did appear remorseful at times, contrary to that ASPD criterion. Cooke, of course, is over eighteen. Dr. Turner disagreed with criteria C, that there was evidence of conduct disorder prior to age 15.³⁶

When Cooke was 13, Dr. Octavio Muniz gave a tentative working diagnosis of “Conduct Disorder Undersocialized Aggressive.”³⁷ Dr. Turner, said however, he was not going to agree that there was evidence of Conduct Disorder in all the records and reports concerning Cooke’s youth.

A psychiatrist, Dr. Lawson Bernstein, examined Cooke on June 13, 2006. His opinion was that Cooke, based on his traumatic history, developed a Mixed Personality Disorder with a mixture of Schizoid/Schizotypal and Paranoid features.³⁸ This condition

³⁵ State’s exhibit 178. While the criteria were displayed for the jury during cross-examination, they were later placed into evidence by the State.

³⁶ The two defense experts and the State’s one expert all agreed that DSM personality disorders about which they opined are not or cannot be diagnosed before the age of 18.

³⁷ Defendant’s exhibit 6, Bates #1294. So that the record is clear, all documents each side relied upon in connection with its experts’ opinions were shared with the other side.

³⁸ See Defendant’s exhibit 14.

was not brought on by consuming “wet” on the occasion of the murder and existed separate and apart from anything that may have been brought on by “wet.”³⁹ It is not a psychotic condition but a chronically dysfunctional way of dealing with the world, he said.

Dr. Bernstein’s opinion started with the general category of a Personality Disorder Not Otherwise Specified:

301.9 Personality Disorder Not Otherwise Specified

This category is for disorders of personality functioning (refer to the general diagnostic criteria for a Personality Disorder on p. 689) that do not meet criteria for any specific Personality Disorder. An example is the presence of features of more than one specific Personality Disorder that do not meet the full criteria for any one Personality Disorder (“mixed personality”), but that together cause clinically significant distress or impairment in one or more important areas of functioning (e.g., social or occupational). This category can also be used when the clinician judges that a specific Personality Disorder that is not included in the Classification is appropriate. Examples include depressive personality disorder and passive-aggressive personality disorder (see p. 789 and p. 791, respectively, for suggested research criteria).⁴⁰

He then went on to Schizoid Personality Disorder since Cooke has, he opined, some features of this, but not all:

Diagnostic criteria for 301.20 Schizoid Personality Disorder

- A. A pervasive pattern of detachment from social relationships and a restricted range of expression of emotions in interpersonal settings, beginning by early adulthood and present in a variety of contexts, as indicated by four (or more) of the following

³⁹ *Id.*

⁴⁰ DSM-IV-TR 301.9, p. 729.

1. neither desires nor enjoys close relationships, including being party of a family
 2. almost always chooses solitary activities
 3. has little, if any, interest in having sexual experiences with another person
 4. takes pleasure in few, if any, activities
 5. lacks close friends or confidants other than first-degree relatives
 6. appears indifferent to the praise or criticism of others
 7. shows emotional coldness, detachment, or flattened affectivity
- B. Does not occur exclusively during the course of Schizophrenia, a Mood Disorder With Psychotic Features, another Psychotic Disorder, or a Pervasive Developmental Disorder and is not due to the direct physiological effects of a general medical condition.

Note: If criteria are met prior to the onset of Schizophrenia, add “Premorbid,” e.g., “Schizoid Personality Disorder (Premorbid).”⁴¹

Dr. Bernstein believed Cooke met criteria 1-5, and 7, but he said he lacked sufficient information to see if Cooke met criteria six. Cooke’s solitariness, lack of close friends, etc., have been discussed. How Cooke meets criterion three in light of his many sexual experiences, he thought was a contradiction to that criterion. Dr. Bernstein mentioned, as did Dr. Turner, Cooke’s pervasive religious views and taking from religion references to himself. He said it was not delusional, though Cooke used flowery “pseudo-biblical language” in strange ways when writing.

⁴¹ *Id.*, 301.20., p. 697.

Dr. Bernstein then reviewed the diagnostic features of a Paranoid Personality

Disorder:

Diagnostic criteria for 301.0 Paranoid Personality Disorder

- A. A pervasive distrust and suspiciousness of others such that their motives are interpreted as malevolent, beginning by early adulthood and present in a variety of contexts, as indicated by four (or more) of the following:
1. suspects, without sufficient basis, that others are exploiting, harming, or deceiving him or her
 2. is preoccupied with unjustified doubts about the loyalty or trustworthiness of friends or associates
 3. is reluctant to confide in others because of unwarranted fear that the information will be used maliciously against him or her
 4. reads hidden demeaning or threatening meanings into benign remarks or events
 5. persistently bears grudges, i.e., is unforgiving of insults, injuries, or slights
 6. perceives attacks on his or her character or reputation that are not apparent to others and is quick to react angrily or counterattack
 7. has recurrent suspicions, without justification, regarding fidelity of spouse or sexual partner
- B. Does not occur exclusively during the course of Schizophrenia, a Mood Disorder With Psychotic Features, or another Psychotic Disorder and is not due to the direct physiological effects of a general medical condition.⁴²

⁴² *Id.*, 301.0, p. 694.

He did not have enough information, he said, to determine if Cooke met criteria 5, 6, and 7. He noted Cooke avoided relationships and lacked empathy. He, Cooke, also felt betrayed by the various mothers of his children whom he believed cheated on him. When speaking of the lack of relationships, Dr. Bernstein referred to a report from Dr. Priscilla Bright of November 8, 1983 (Cooke was just short of 13). She, Dr. Bernstein testified, referred to Cooke's "avoidance of relationships."⁴³ As to Cooke's writing on the walls in the Harmon and Bonistall apartments, setting the fire to Bonistall's body, and using bleach, Dr. Bernstein told the jury that, even if one is mentally ill, one can take conscious efforts to avoid being caught.

The doctor also related that Cooke had said he was smoking "wet" during the period involved in this case, late April, early May 2005. He told Dr. Bernstein Bonistall had smoked it too. Dr. Bernstein testified that he found it "unbelievable" that Cooke had consensual sex with Bonistall.

Dr. Bernstein described Cooke as a "very anti-social guy." Cooke has substantial anti-social features in his personality disorder. But Dr. Bernstein said, Cooke did not meet the diagnostic criteria for ASPD. He stated that Dr. Stephen Mechanick's diagnosis of ASPD was "overly reductionistic" and that too many things did not fit.

He also said, however, if one went strictly by the DSM-IV-TR criteria for ASPD, Cooke meets them. But, Dr. Bernstein said that would be looking at a complex case in a

⁴³ Defendant's exhibit 6F.

vacuum. He disagreed with Dr. Turner's diagnosis of SPD since Cooke does not meet all of its criteria.

Dr. Bernstein testified that the personality disorder with which he diagnosed Cooke substantially disturbed Cooke's thinking, feeling, or behavior at the time of the offenses. He also said, however, these disorders did not put Cooke within a psychiatric disorder that left him with insufficient willpower to choose whether he should do the act or refrain from it although physically capable.⁴⁴

Cooke chose to testify (contrary to counsel's advice). He did so in narrative fashion.⁴⁵ He told the jury that he did not approve of the mental illness defense that his lawyers were presenting. "I didn't kill this person," he testified. Dr. Bernstein was "pushing" what his lawyers (not he) wanted. He claimed the prosecutor was railroading him; that the Payless employees (Jones and Hannah) testified only to get the reward; the police had threatened Campbell; the case was a set-up because he had sex with Bonistall; this was a racial case; he is not mentally ill, and the judge knows it; Bonistall's parents do not want to accept her behavior; he left his Payless job due to disability; he discussed the boot print evidence; and accused the State of evidence tampering and more.

Since Bonistall had her clothes on, Cooke questioned how she could be raped. He said, if convicted, it would be on the basis of "false evidence." On the issue of "wet," he

⁴⁴ See 11 *Del.C.* § 401(b).

⁴⁵ *Shockley v. State*, 565 A.2d 1373 (Del. 1989).

said Bonistall only smelled the smoke but held nothing. He denied telling Dr. Turner what he had said Cooke told him about “wet.” He basically ended his cross-examination to say to express remorse is to say you are guilty.⁴⁶

State’s Rebuttal

The State’s rebuttal basically fit into two categories. First, was the testimony from Dr. Mechanick. Second, was testimony from several victims of Cooke’s criminal acts years before the murder and his crimes in Atlantic City committed about thirty-five days after Bonistall’s murder.

Earlier it was noted⁴⁷ that Dr. Bernstein had said (1) diagnosing Cooke with ASPD was “overly reductionistic,” but (2) staying with DSM-IV-TR, Cooke met the diagnostic criteria of ASPD.

It was Dr. Mechanick who diagnosed Cooke with ASPD. For clarity’s sake, it is helpful to repeat the diagnostic criteria for ASPD:

Diagnostic criteria for 301.7 Antisocial Personality Disorder

A. There is pervasive pattern of disregard for and violation of the rights of others occurring since age 15 years, as indicated by three (or more) of the following:

⁴⁶ During his testimony, the Court excused the jury several times. He had violated the restrictions, even as broad as they were, about what he could offer as relevant evidence. Upon returning each time, the jury was given cautionary instructions.

⁴⁷ *Supra* p. 28.

1. failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest
 2. deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure
 3. impulsivity or failure to plan ahead
 4. irritability and aggressiveness, as indicated by repeated physical fights or assaults
 5. reckless disregard for safety of self or others
 6. consistent irresponsibility, as indicted by repeated failure to sustain consistent work behavior or honor financial obligations
 7. lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another
- B. The individual is at least age 18 years.
- C. There is evidence of Conduct Disorder with onset before age 15 years.
- D. The occurrence of antisocial behavior is not exclusively during the course of Schizophrenia or a Manic Episode.⁴⁸

As had Doctors Bernstein and Turner, Dr. Mechanick read the voluminous records from New Jersey,⁴⁹ the CHOP hospitalization records,⁵⁰ the Salem Memorial Hospital

⁴⁸ DSM-IV-TR, State's exhibit 178.

⁴⁹ Defendant's exhibits 6 and 11.

⁵⁰ Defendant's exhibit 7.

records,⁵¹ the Delaware Department of Correction records,⁵² and many other records. He issued two reports.⁵³ He interviewed Cooke on September 25, 2006.

Dr. Mechanick's first explained why Cooke did not meet the diagnostic criteria for SPD:⁵⁴

1. Ideas of reference: Cooke's taking of ideas from the Bible and applying them to himself was not done in an unusual way.
2. Odd beliefs: there was a little bit of this but having a sixth sense is not really it. His claims of meeting Bonistall before the murder could not be confirmed.
3. Unusual perceptual experiences: There were no pre-arrest records of Cooke having delusions, delusional beliefs or disorganized thoughts. His statement to Dr. Turner about speaking with Satan Dr. Mechanick viewed as an internal conflict over what to do. Nor did Dr. Mechanick note any evidence of hallucinations. When asked on cross about the September 2005 report of Cooke saying he heard a baby crying, Dr. Mechanick said such "voices" usually give directions (do or not do something). The baby's crying did not.
4. Odd thinking and speech: Dr. Mechanick saw none. Cooke's flowery language does not meet this diagnostic criterion; there needs to a more profound disorganization.
5. Suspiciousness or paranoid ideation: this should be an excessive and unreasonable mistrust of others. Here in a capital case with a gruesome murder, it would not be unusual for a person to be suspicious of the police and prosecution and any others who did not accept his protestations of innocence.

⁵¹ Defendant's exhibit 5.

⁵² Defendant's exhibit 10.

⁵³ State's exhibit 176 and 177.

⁵⁴ *See supra* pp. 18-19.

6. Inappropriate affect: Dr. Turner had noted a flat affect. But Dr. Mechanick said Cooke ran “hot and cold.” Cooke expressed anger. All three experts had viewed a four hour plus Newark Police interview with Cooke during which he was often quite animated.⁵⁵
7. Odd behavior or appearance: he saw none of that in Cooke.⁵⁶
8. Lack of close friends/confidants: Dr. Mechanick said he received limited information from Cooke on this matter. He noted his frequent sexual relationships demonstrated social skills. Also, as two neighbors (Sitz and Taylor) had reported they saw Cooke playing basketball in Dickey Park with others. All of this, Dr. Mechanick said, is inconsistent with this criteria.
9. Excessive social anxiety: this means a feeling of lack of comfort or fear for safety in public and low self-esteem. Dr. Mechanick saw none of this in Cooke based on the records and his interview.

In sum, Dr. Mechanick said, there is no pervasive pattern of SPD in Cooke’s life as the criteria for this disorder require. Having consensual sex and killing Bonistall does not show SPD, which would substantially affected his thinking, nor did it mean Cooke had insufficient willpower to do or refrain from doing the rape and murder.

Dr. Mechanick ruled out Dr. Bernstein’s diagnosis which included features of Schizoid Personality Disorder (SPD):⁵⁷

- A A pervasive pattern of detachment from social relationships and a restricted range of expression of emotions in interpersonal settings, beginning by early adulthood and present in a variety of contexts, as indicated by four (or more) of the following:

⁵⁵ The full video was not shown to the jury; nor did anyone request that it be shown.

⁵⁶ Cooke was usually in civilian clothes in court and looked pretty much as shown in his mug shot. State’s exhibit 103.

⁵⁷ DSM-IV-TR, 301.20, p. 697.

He agrees that there is some evidence that Cooke has a detachment from social relationships. But because there are records he was in a gang or gangs when younger and because of so many sexual relationships, he cannot be sure this diagnostic criteria is met.

- (1) Neither desires nor enjoys close relationships, including being party of a family; (2) and almost always chooses solitary activities.

The records did not support a choice of solitary activities or an isolated person.

- (3) Has little, if any, interest in having sexual experiences with another person.

His many children by six or seven women belie this criteria.

- (4) Takes pleasure in few, if any, activities.

There is little evidence to say he takes pleasure in few activities.

- (5) Lacks close friends or confidants other than first-degree relatives.

The records on close friends are insufficient to say one way or the other if this criterion is met.

- (6) Appears indifferent to the praise or criticism of others.

Cooke is reactive, and does appear indifferent.⁵⁸

- (7) Shows emotional coldness, detachment, or flattened affectivity.

Cooke is quite emotional discussing his case. This criterion is not the same as lack of remorse.⁵⁹

⁵⁸ During his narrative on direct and cross-examination, the jury saw for itself this criterion is inapplicable.

⁵⁹ Compare to ASPD 301.7 A (7), *supra* p. 23; and refer to footnote 58.

Dr. Mechanick went on to say that Cooke's interest in sex with Bonistall and Cuadra is not typical of schizoid personality disorder. If, as Cooke claimed, Bonistall refused to perform a sex act as he wanted, a person with this disorder would not care (i.e., would not commit murder for that reason).

He summed up his opinions in this regard that he could not find any features of schizoid personality disorder in Cooke; nor did his history show a pervasive pattern of any of these features. But even if he had it at the time of the offenses, Dr. Mechanick said it did not substantially affect his thinking or willpower.⁶⁰

Dr. Mechanick also ruled out Dr. Bernstein's diagnosis that Cooke met several of the criteria of Paranoid Personality Disorder:

- A A pervasive distrust and suspiciousness of others such that their motives are interpreted as malevolent, beginning by early adulthood and present in a variety of contexts, as indicated by four (or more) of the following:

This means excessive and unrealistic mistrust of others' motives. As Dr. Bernstein formed the opinion from his prison visit to Cooke, such a setting is natural for becoming mistrustful.

- (1) Suspects, without sufficient basis, that others are exploiting, harming, or deceiving him or her.

He saw little evidence of this in the voluminous pre-arrest records: selling drugs, many motor vehicle charges, and many arrests since age fifteen.

- (2) Is preoccupied with unjustified doubts about the loyalty or trustworthiness of friends or associates.

⁶⁰ 11 Del.C. § 401(b).

Perhaps Cooke was pre-occupied by Campbell but not by all of his earlier lady friends. As there were crimes in which he had co-defendants this criterion is ruled out.

- (3) Is reluctant to confide in others because of unwarranted fear that the information will be used maliciously against him or her.

Cooke is guarded in his conversation but being guarded is not this criterion; he is not unusually suspicious.

- (4) Reads hidden demeaning or threatening meanings into benign remarks or events.

Dr. Mechanick saw no historical evidence of this in the many records.

- (5) Persistently bears grudges, i.e., is unforgiving of insults, injuries, or slights.

There is no historical evidence that Cooke holds long-term grudges.

- (6) Perceives attacks on his or her character or reputation that are not apparent to others and is quick to react angrily or counterattack.

The attacks Cooke perceives are nothing more than the charges for which he is on trial.

- (7) Has recurrent suspicions, without justification, regarding fidelity of spouse or sexual partner.

There was a little evidence to suggest he had some doubts about the fidelity of some of the women who were mothers of his children. But what Dr. Mechanick found did not rise enough to meet this criterion.

Even assuming, Dr. Mechanick testified, that Cooke had Paranoid Personality Disorder, it did not substantially affect his thinking or willpower (or meet any other

aspects of the statute on guilty , but mentally ill),⁶¹ but he opined that Cooke did not have this disorder anyway.

Dr. Mechanick's diagnosis was that Cooke met the necessary criteria of Anti-Social Personality Disorder:⁶²

A There is a pervasive pattern of disregard for and violation of the rights of others occurring since age fifteen years, as indicated by three (or more) of the following.

He said there was a pervasive pattern since age fifteen of more than three of the following:

(1) Failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest.

Cooke's extensive criminal record, arrests and convictions decidedly meet this criterion.⁶³

(2) Deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure.

Dr. Mechanick saw limited evidence of this.

(3) Impulsivity or failure to plan ahead.

There is some evidence for both parts of this criteria: so many children by so many women; no life plan; not caring for his many children, and there is some impulsivity in the circumstances of Bonistall's murder, such as the means used to kill her was something he did not bring in to her apartment.

(4) Irritability and aggressiveness, as indicated by repeated physical fights or assaults.

⁶¹ 11 Del.C. § 401(b).

⁶² DSM-IV-TR, 301.7, p. 706.

⁶³ State's exhibit 184.

Campbell mentioned to Dr. Turner about physical abuse by Cooke, and she called the police about it, too. There is also history of assault convictions.⁶⁴

(5) Reckless disregard for safety of self or others.

There is limited evidence, Dr. Mechanick said, of the reckless disregard for other's safety outside the circumstances of the charges in this case.

(6) Consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations.

Cooke met this criterion because he was behind in most of his child support obligations. He did not have a stable work pattern. All of this was long-term.

(7) Lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another.

In speaking with Cooke, he never expressed remorse for any of his past crimes. Cooke shifted to Bonistall some of the responsibility of what happened by claiming she was promiscuous, one or more of those men killed her, she consumed drugs, she even sought to buy from him,⁶⁵ her alleged failure to comply with his sexual demands, did not know how this happened, etc. Dr. Mechanick saw similar blame shifting in Cooke's prior psychological and other records.

Dr. Mechanick also noted that in 1993, when Cooke was twenty-two, he was diagnosed with ASPD.⁶⁶

B The individual is at least age 18 years.

Cooke was thirty-five when Dr. Mechanick interviewed him. Clearly he met the criteria of being over eighteen.

⁶⁴ *Id.*

⁶⁵ State's exhibit 176, p. 17.

⁶⁶ State's exhibit 183. Evaluation by a New Jersey prison psychologist, Dr. Robert Hopkins.

C There is evidence of Conduct Disorder with onset before age fifteen years.

Dr. Mechanick saw records where Cooke was diagnosed with Conduct Disorder before Cooke was fifteen.⁶⁷ The other records from Cooke's youth⁶⁸ confirmed Dr. Mechanick's independent opinion that a pre-15 Conduct Disorder diagnosis was appropriate. He noted some other pre-15 diagnosis in the records.

Using the prosecutor's description that Cooke's childhood was "horrible," Dr. Mechanick concurred in the obvious that it put Cooke at higher risk for an adult personality disorder. Dr. Mechanick testified Cooke in late April, early May 2005 did not have a psychiatric disorder that either substantially affected his thinking, feeling, etc., or which left him with insufficient willpower to act or not act.

Dr. Mechanick reviewed, as had the defense experts, the Department of Correction's records of Cooke's "feces" incident in September 2005.⁶⁹ He saw no relationship between that incident and other things in those records which bore any relationship to Cooke's mental status three months earlier when these crimes were committed. His behavior in September was not psychotic but an appearance of psychosis. He noted there was no prior history of Cooke being psychotic before September, and he was not in April or May. To get out of his isolated confinement and have more human

⁶⁷ Defendant's exhibit 6, Bates #1293-94 in 1984; Bates # 2083.

⁶⁸ Defendant's exhibits 6 and 11.

⁶⁹ Defendant's exhibits 10.

contact, and maybe help his defense, Dr. Mechanick suggested the possibility of Cooke malingering.

He also said that core characteristics of ASPD are repeated criminal conduct and antisocial behavior. Cooke had both characteristics along with lack of remorse, which he described as an “internal” feature of ASPD, and which is an important part of ASPD. It was Dr. Mechanick’s understanding that the Delaware Code excluded ASPD as a psychiatric disorder which would qualify as a “psychiatric disorder” for guilty, but mentally ill. Dr. Mechanick told the jury that Cooke did not have in April/May 2005 any psychiatric disorder which either (1) affected his thinking feeling or behavior, or left him with insufficient willpower to choose, (2) whether he would commit the crimes, or (3) whether he would refrain from committing these offenses.

Cooke’s evidence of guilty, but mentally ill, which if believed by the jury, would lead to such a verdict, opened the door to rebuttal evidence of his post-murder criminal conduct in Atlantic City.⁷⁰ It also related to the diagnosis of ASPD (criminality). The defense agreed about the admissibility of this conduct evidence but sought to have proof presented only through the police reports of the incidents. After examining them, the Court determined that they were insufficient to convey the details of what the jury should know. The State, therefore, presented victims of Cooke’s conduct in Atlantic City in June, 2005.

⁷⁰ *People v. Santarelli*, 401 N.E.2d 199 (N.Y. 1980).

1. Mildred Boody, now seventy-two years old, saw Cooke sitting a neighbor's porch. This was June 6th around 6:30 a.m. Over an hour and a half later as she went to leave, she discovered Cooke crouched down by her back door. He was wearing and also carrying a white t-shirt and a switchblade knife. He grabbed her arms and put his finger under her bracelet. He said. "Give me your jewelry or life," Cooke said. There was a struggle and he broke off the bracelets, but he dropped them as Boody screamed and scratched him. He did not pick them up.⁷¹
2. Angel Rojas on June 6, 2005 was asleep in his bed around 4:00 a.m. when Cooke entered a window to his bedroom, pointed a gun at his head and pulled his hair; "Don't move or I'll kill you," Cooke said. He wanted money. A housemate came in and got into a tussle with Cooke. Cooke wanted the roommate's necklace which he took off and gave to him. He also wanted his cell phone, but apparently never got it. He took other things from the house. Before leaving they went downstairs where Cooke had Rojas put his hands up on the wall.
3. Kathy Chao, now sixty-three years old, was falling asleep after 11:00 p.m. June 6th. She heard a noise and then sensed someone at her bedroom door. The intruder had a mask. He sat on her bed and placed his hand on her neck saying, "Don't talk, don't move." She complied. At one point she heard things falling out. She had had her credit cards and \$120.00 dollars in a black pouch on the night stand near her bed. While she remained in her bed, the intruder went to other rooms in the house. One time he came to her and asked where her money was. At another point, he flipped back the blanket, under which she had been sleeping, but put it back. He snatched the necklace off her. He stole a ring, a cell phone, and three credit cards, too.

When Cooke was arrested in Delaware a day or so later, Chao's three credit cards were on him.

The Court has gone to what might be considered as unusual lengths to review the evidence presented during the guilt phase. There are three reasons. One is the testimony

⁷¹ Cooke in a later statement denied this. He said he only touched Boody after the incident to calm her down.

and opinions of Doctors Turner and Bernstein for the defense. It was necessarily extensive. And the defense introduced many, many records about Cooke's youth which related to their diagnoses. The jury had a lot to consider with just that evidence. The second reason is that the evidence in the guilt phase carries over to the penalty hearing.⁷² There is a third reason. When instructing the jury on the features of guilty, but mentally ill, the Court said:

GUILTY, BUT MENTALLY ILL

Another possible verdict as to all charges which I have just defined that you may consider is "guilty, but mentally ill." This verdict is appropriate if you determine that, at the time of the conduct charged, the defendant suffered from a psychiatric disorder, and that disorder either substantially disturbed his thinking, feeling or behavior or left him with insufficient willpower to choose whether to do the act or not, even if he was physically capable of refraining from doing it.

Before you can consider this possible verdict for any of these charges, however, you must first find that the State has established the defendant's guilt as to that charge beyond a reasonable doubt. If you find the defendant not guilty of any charge or charges, you do not consider this possible verdict as to that charge.

The term "psychiatric disorder" means any mental or psychotic disorder recognized by the field of psychiatry as affecting a person's behavior, thinking, feeling or willpower.

Under Delaware law, anti-social personality disorder by itself does not constitute a psychiatric disorder as I have just defined those words for you. The verdict of guilty but mentally ill is not available if the psychiatric disorder was caused by the voluntary ingestion or inhalation of intoxicating liquor or drugs.

⁷² *Flamer v. State*, 490 A.2d 104 (Del. 1983); cert. denied, 464 U.S. 865, 104 S.Ct. 198, 78 L.E.2d 173 (1983); 474 U.S. 865, 106 S.Ct. 185, 88 L.Ed.2d 154 (1985).

You need not find that the mental illness caused the defendant to commit the offenses with which he is charged.

There are three bases for returning a verdict of "guilty, but mentally ill" for a defendant who suffers from a psychiatric disorder. The first is where a defendant's psychiatric disorder substantially disturbed his thinking, feeling or behavior. The second is where defendant's disorder substantially disturbed his thinking, feeling or behavior and left him with insufficient willpower to choose whether to do the act or refrain from doing it. The third is where defendant's disorder left him with insufficient willpower to choose whether to do the act or refrain from doing it.

Neither the State nor the defense has the burden of proving that the defendant is guilty but mentally ill. You, the jury, have the option of returning a verdict of "guilty, but mentally ill" if you determine that such a verdict is warranted by the evidence as to any charge or charges (emphasis added).⁷³

The underlined (only for purposes of this opinion) language was given after days of debate involving counsel and the Court. It is indispensable and pivotal to this case. It is pivotal because, when testifying, Dr. Mechanick said:

Defense Counsel: And, Doctor, even if you did feel that he was schizotypal or mixed personality with schizotypal, schizoid and paranoid features – you're of the opinion that even if he had those illnesses, they weren't substantially affecting his thinking, feeling, or behavior during the conduct in question in this trial, correct?

Doctor: That's correct. Again, we have to look at the particular disorder and ask the question, how was it substantially affecting his thinking, feeling or behavior. And when we go through – I won't belabor it right now. When we go through each of these criteria, the question would be in what, if any, was this substantially affecting his thinking, feeling or behavior and what evidence is

⁷³ Instruction to the Jury dated March 5, 2007, p. 22-23.

there that he was under the burden of one of those personality disorders at the time of the crime. And, again, I won't go into great detail, but as I've testified, we have several versions from him, none of which, in my opinion, show evidence that he was suffering substantial burden from any of those disorders at the time of the crime, nor does the physical evidence, the police evidence that I've reviewed indicate that he was substantially burdened by any of those disorder. So that's my opinion.

Defense Counsel: Doctor, did you diagnose James Cooke as suffering or laboring under an antisocial personality disorder at the time of these offenses, correct?

Doctor: Yes.

Defense Counsel: And you believe that that did substantially affect his thinking, feeling, and behavior, correct?

Doctor: Yes.⁷⁴

He also testified that at the time of these offenses, Cooke was “suffering” from a mental illness that substantially affected his thinking, feeling, and behavior.⁷⁵ But, he went on to say that his understanding of Delaware law is that ASPD does not qualify as a “psychiatric disorder” and as encompassed by § 401(b). This view of Delaware Law was shared by defense experts Dr. Turner and Dr. Bernstein.

Even though these three mental health experts agreed Delaware Law excludes ASPD as a basis for finding a defendant guilty, but mentally ill, the issue is, nonetheless, one of statutory interpretation. Such a task is a judicial one. The Court, therefore, prior

⁷⁴ Trial transcript of cross-examination of Dr. Mechanick, dated February 26, 2007.

⁷⁵ Trial transcript of cross-examination of Dr. Mechanick, dated February 26, 2007.

to instructing the jury as it did, had to engage in this interpretive process. This became necessary because of the statutory language in § 401 and because of Dr. Mechanick's diagnosis. If ASPD is a personality disorder - mental illness - which, under the statute, cannot be a basis for a finding of guilty, but mentally ill and the jury accepted his diagnosis, the verdict would be guilty (there was no real issue of being not guilty).

The starting point for all of this, of course, is the statute itself:

401 Mental illness or psychiatric disorder

- (a) In any prosecution for an offense, it is an affirmative defense that, at the time of the conduct charged, as a result of mental illness or mental defect, the accused lack substantial capacity to appreciate the wrongfulness of the accused's conduct. If the defendant prevails in establishing the affirmative defense provided in this subsection, the trier of fact shall return a verdict of "not guilty by reason of insanity."
- (b) Where the trier of fact determines that, at the time of the conduct charged, a defendant suffered from a psychiatric disorder which substantially disturbed such person's thinking, feeling, or behavior and/or that such psychiatric disorder left such person with insufficient willpower to choose whether the person would do the act or refrain from doing it, although physically capable, the trier of fact shall return a verdict of "guilty, but mentally ill."
- (c) It shall not be a defense under this section if the alleged insanity or mental illness was proximately by the voluntary ingestion, inhalation or injection of intoxicating liquor, any drug or other mentally debilitating substance, or any combination thereof, unless such substance was prescribed for the defendant by a licensed health care practitioner as was used in accordance with the directions of such prescription. As used in this chapter, the terms "insanity" or "mental illness" do not include an abnormality manifested only by repeated criminal or other nonsocial conduct.⁷⁶

⁷⁶ 11 *Del. C.* § 401.

There are several fundamental rules of statutory construction which courts must use when interpreting a statute. In interpreting a statute, the Court's function is to determine and to give effect to the legislature's intent.⁷⁷ Statutes must be read as whole and all words must be given effect.⁷⁸ Where a statute is unambiguous and there is no reasonable doubt as to its meaning, the Court must give effect to its literal meaning.⁷⁹ If a statute is reasonably susceptible of different conclusions or interpretations, it is ambiguous.⁸⁰ Also, ambiguity can result if an interpretation leads to an absurd result.⁸¹ Finally, if uncertainty exists, the statute must be viewed as a whole, and the Court must seek to harmonize it and avoid mischievous or absurd results.⁸²

With these statutory construction principles in mind, the Court had to first determine if the statute is or is not ambiguous. By law, the catch line to § 401 "Mental illness or psychiatric disorder" is not part of the substantive language contained in § 401.⁸³ This means determining possible ambiguity or interpreting the language of the statute itself, a

⁷⁷ *Coleman v. State*, 729 A.2d 847, 851 (Del. 1999).

⁷⁸ *Nationwide Ins. Co. v. Graham*, 451 A.2d 832, 834 (Del. 1982).

⁷⁹ *Coastal Barge Corp. v. Coastal Zone Ind. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985).

⁸⁰ *Snyder v. Andrews*, 708 A.2d 237, 241 (Del. 1998).

⁸¹ *Newtowne Village Service Corp. v. Newtowne Rd. Dev. Co.*, 772 A.2d 172, 175 (Del. 2001).

⁸² *Watson v. Burgan*, 610 A.2d 1364, 1368 (Del. 1992).

⁸³ 1 *Del. C.* § 306.

court cannot use the catch line. The issue of whether the statute is or is not ambiguous arises, initially, from two of its subsections. In § 401(b) the words “mental illness” are not used. Instead, in (b) the words are “psychiatric disorder.” But in § 401(c), the potential exclusion of ASPD contained in the last sentence refers to “mental illness” and not to “psychiatric disorder.” But the exclusionary language in that last sentence refers to “chapter.” Chapter refers to all of Chapter 4 of Title 11.⁸⁴

Since subsection (c) refers to chapter and chapter includes all of § 401, a threshold issue arises whether the exclusionary language in (c) encompasses (b). That question arises, as noted, because (c) uses “mental illness” and (b) uses “psychiatric disorder.” If just these two subsections are considered, it is arguable whether an ambiguity exists because the two seemingly different terms are meant to describe different things. An adequate interpretive analysis cannot end with just these two subsections, however, even though in isolation, this Court maintains ambiguities exist in them. By using “chapter” in (c) the analysis necessarily becomes broader than just examining § 401.

As noted, the word “chapter” controls all of Chapter 4. Included in Chapter 4 is § 408 which was enacted with and when § 401 was amended to establish the verdict of guilty, but mentally ill. That section, in pertinent part, states:

§ 408. Verdict of “guilty, but mentally ill” - Sentence; confinement; discharge from treating facility.

(a) Where a defendant’s defense is based upon allegations which, if true, would be grounds for a verdict of “guilty, but mentally ill” or the defendant

⁸⁴ §§ 401 - 477.

desires to enter a plea to that effect, no finding of “guilty, but mentally ill” shall be rendered until the trier of fact has examined all appropriate reports (including the presentence investigation); has held a hearing on the sole issue of the defendant’s *mental illness*, at which either party may present evidence; and is satisfied that the defendant was in fact *mentally ill* at the time of the offense to which the plea is entered. Where the trier of fact, after such hearing, is not satisfied that the defendant was *mentally ill* at the time of the offense, or determines that the facts do not support a “guilty, but mentally ill” plea, the trier of fact shall strike such plea, or permit such a plea to be withdrawn by the defendant. A defendant whose plea is not accepted by the trier of fact shall be entitled to a jury trial, except that if a defendant subsequently waives the right to a jury trial, the judge who presided at the hearing on *mental illness* shall not preside at the trial.⁸⁵ (Emphasis added)

In addition, §§ 408(b) and (c) use the term “mental illness.” The words “psychiatric disorder” do not appear anywhere in § 408. This choice of words is crucial because § 408 is the statutory provision setting out the sentencing and treatment process for persons who plead or are found guilty, but mentally ill. Sections 401(b) and § 408, therefore, are inextricably intertwined. They must be read in *pari materia*.⁸⁶ When that is done, it is manifest that the General Assembly found the phrases “psychiatric disorder,” “mental illness,” and “mentally ill” to be the same and interchangeable.

Even though different terms are used in § 401 (b) and § 408, the conclusion remains the same that the legislature viewed them as meaning the same thing. For one thing, §401(b) would otherwise become hopelessly ambiguous. The verdict or finding is “guilty, but mentally ill” not “guilty but suffering from, or by reason of, a psychiatric disorder.”

⁸⁵ 11 Del. C. § 408(a).

⁸⁶ *State Farm Mut. Auto Ins. Co. v. Wagamon*, 541 A.2d 557, 560 (Del. 1988).

And, if the two terms were not synonymous, there would be a disconnect between §401(b) and § 408 whereby a person would have a psychiatric disorder but would be unable to get treatment for mental illness for which § 408 provides. Such would clearly be an absurd result, and Courts are admonished not to interpret statutes in a way that lead to absurd results.⁸⁷

The Court stated earlier that § 408 was enacted at the same time § 401 was amended to include a new subsection (b) to allow for a verdict or finding of guilty, but mentally ill. Reference to legislature history is appropriate when seeking to resolve ambiguity.⁸⁸ Section 401 was amended in 1982 in response to the Hinkley shooting of President Reagan and the later verdict in that matter. The amendment process began with H.B. 567 of the 131st General Assembly. This bill repealed § 401 as it then existed and substituted three new subsections. As originally proposed in HB 567, they read:

Section 1. Amend § 401, Chapter 4, Title 11 of the Delaware Code by striking said section in its entirety, and substituting in lieu thereof the following:

§ 401. Insanity; Mental Illness; Defense and Verdicts

(a) In any prosecution for an offense, a defendant may move for a verdict of “not guilty by reason of insanity” only after a finding by the trier of facts that, at the time of the conduct charged and as a result of mental illness or mental defect, such defendant lacked substantial capacity to appreciate the wrongfulness of his conduct.

⁸⁷ *E. I. duPont de Nemours & Co. v. Clark*, 88 A.2d 436, 438 (Del. 1952).

⁸⁸ *A & P Stores v. Hannigan*, 367 A.2d 641, 643 (Del. 1976).

(b) Where the trier of fact determines that, at the time of the conduct charged, a defendant suffered from a psychiatric disorder which substantially disturbed such person's thinking, feeling or behavior and/or that such psychiatric disorder left such person with insufficient willpower to choose whether he would do the act or refrain from doing it, although physically capable, the defendant may move for a verdict of "guilty, but mentally ill."

(c) It shall not be a defense under this section if the alleged insanity or mental illness was proximately caused by the voluntary ingestion, inhalation or injection of intoxicated liquor, any drug or other mentally-debilitating substance, or any combination thereof, unless such substance was prescribed for the defendant by a licensed health care practitioner and was used in accordance with the directions of such prescription. As used in this chapter, the terms "insanity" or "mental illness" do not include an abnormality manifested only by repeated criminal or other non-social conduct."⁸⁹

HB 567 also sought to create a section dealing with the process for determining the sentence and for the treatment process of persons found guilty, but mentally ill. As introduced, this section was to be placed in the Delaware Code as a new section § 407. It later became and now appears as § 408. The proposed new § 407 had three parts. As originally proposed, subsection (a) was written as it now appears in § 408(a). To note again, that subsection uses the words "mental illness" not "psychiatric disorder." Subsection (b) as first proposed did not use either term.

HB 567 was amended, however, by HA 2 as it went through the legislative process before what is now §§ 401 and 408 became law. One part of the amendment was a change to the proposed § 401(a) and is not pertinent to the issue at hand. Section 401(b) was not amended. But Section 407(b) was amended, and it read as it is now found in § 408(b).

⁸⁹ H.B. 567, Section 1.

The revised subsection 408(b) used the term “mental illness.”⁹⁰ As has been shown, § 408 is the necessary sentencing and treatment adjunct to § 401(b). The relevant sentence of § 408 reads:

The Commissioner shall thereupon confine such person in the Delaware Psychiatric Center. Although such person shall remain under the jurisdiction of the Department of Correction, decisions directly related to treatment for the *mental illness* shall be the joint responsibility of the Director of the Division of Substance Abuse and Mental Health and those persons at the Delaware Psychiatric Center who are directly responsible for such treatment. (Emphasis the Court’s).⁹¹

This statutory and enactment of history alone is sufficient to unequivocally demonstrate that to the General Assembly - and hence to the courts - the terms “mental illness” and psychiatric disorder” mean and are to be interpreted to mean the same. When § 407(b) was amended in HA 2, the Legislature did not chose to say “psychiatric disorder” in that section as these terms appeared in § 401(b) in HB 567. Of course, it would have been preferable to have used the same term throughout.

There is more in this legislative history which manifests that “psychiatric disorder” and “mental illness” are synonymous. In HB 567 the original § 407(b) did not include either of those terms. In that bill’s original version of § 401(b) the phrase “psychiatric disorder” exists. In HA 2 to HB 567, there was no change in the wording of § 401(b). But when § 407(b) was changed by the amendment, the words “mental illness” were used. It

⁹⁰ HA 2 to HB 567.

⁹¹ 11 *Del. C.* § 408.

is noteworthy, therefore, since the amendment came later in time, when amending § 407(b) and using the term “mental illness,” the Legislature, did not find it necessary to change the words in § 401(b) or use the term “psychiatric disorder” in the revised § 407(b).

While the amendment to § 407(b) was offered to add (and clarify) the relationship of the Department of Correction to the Department of Health and Social Services), the basic intent was retained. That intent was to provide treatment of persons determined to be “guilty, but mentally ill.” And for what, under § 407(b) were such persons to be treated? They are to be treated for “mental illness” and not “psychiatric disorder.” In short, the General Assembly in 1982 saw no distinction between these two terms and that they are one and the same thing.

The statutory language in §§ 401 and 408 lead to the conclusion as noted. But if any doubt lingers, HB 567 has a lengthy synopsis (expression of legislative intent) and it removes any such lingering doubt:

Synopsis to HB 567: In criminal trials, those defendants who claim to have been suffering from a temporary mental illness at the time of the offense have long been a problem for the courts because the line between sanity and insanity often is not clear. Among courts and law enforcement agencies there is the growing conviction that of persons who were in fact mentally ill during the commission of the offenses, such mental illness for many did not (or should not have) sufficiently affected such person’s ability to obey the law. In many states such a person presents juries with the difficult choice of either returning a finding of guilty (even though the jury may feel compassionate because of the defendant’s mental problems); or not guilty by reason of insanity (even though the person appears to be able to appreciate the criminal nature of his conduct and is able to conform his conduct with the requirements of law, notwithstanding such person’s *mental illness*).

Several states have developed an alternative verdict of “guilty, but insane” or “guilty, but mentally ill.” In these states, a jury may recognize a defendant as being *mentally ill*, but nevertheless hold him responsible for his criminal actions; provided however, that the *mental illness* does not negate the defendant’s ability to understand the unlawful nature of his conduct, and his ability to confirm his actions to the requirement of law. Where this alternative verdict has been rendered, the person convicted is sentenced under the criminal law and remanded to the Department of Correction after psychiatric evaluation by the State. If such person requires further treatment for the mental illness, that is provided. If the *mental illness* occurred only at the time of the offenses and is not in evidence at the time of incarceration, such person is returned to the Department of Correction for the completion of the sentence. Such a statute enable juries to recognize that some defendants are *mentally ill*, but that such *mental illness* is not related to the crime committed; nor to the defendant’s possible culpability for it. It would also enable a jury to be confident that a defendant that is incarcerated as a result of its verdict will receive treatment for the *mental illness* involved while he is confined.

On August 17, 1981 the United States Attorney General’s Task Force for Violent Crime issued its Final Report, which recommends legislation that would create an additional verdict in federal criminal cases of “guilty, but mentally ill.” *This act is a “guilty, but mentally ill” statute. Under this legislation, if the defendant has committed the offense (but is nevertheless adjudged to have been “insane” or “mentally ill” at the time of the commission of the offense) and is convicted, he nevertheless receives the needed psychiatric evaluation and treatment. In addition, further evaluation and/or treatment for the defendant’s mental condition is required as a condition for parole, in the event that the defendant is ever eligible for parole.* This Act is based on former House Bill 770 of the 129th General Assembly, and contains the same intent as that legislation. HB 567, 131st General Assembly. (Italics the Court’s).⁹²

First, the italicized language uses “mentally ill” and not “psychiatric disorder.”

Second, the principle at work here is that a person found to be guilty, but mentally ill can

⁹² Synopsis HB 567.

receive the same sentence as if the verdict were guilty, but now there is a major new component for such persons: treatment. And the treatment in the statutory language and in the synopsis is for “mental illness.”

It is, of course, unclear and unknown where the term “psychiatric disorder” came from and why it was used in that one place in (b) when “mentally ill” or “mental illness” is used everywhere else in all the applicable statutes. The conclusion remains, however, that to achieve a harmonious result from these different terms the two terms are synonymous.⁹³

There is also compelling decisional support for this conclusion. In *Daniels v. State*,⁹⁴ the Supreme Court had its first opportunity to address § 401(b) since its enactment in 1982. In that case, the Supreme Court stated that Delaware’s law was patterned after the Michigan law of guilty, but mentally ill and “fit” within the Michigan statutory pattern.⁹⁵

Curiously, the Michigan law in effect then - 1982 - to which the *Daniels* Court referred and which is reviewed in several Michigan decisions cited by the *Daniels* Court - did not use the words “psychiatric disorder.” It used “mentally ill.” Nor was there any

⁹³ *State Dep’t of Labor v. Reynolds*, 669 A.2d 90, 93 (Del. 1995).

⁹⁴ 538 A.2d 1104 (Del. 1988).

⁹⁵ *Id.*, at 1108.

exclusionary language in the Michigan statute in any way comparable to § 401(c).⁹⁶ This comparison between the two states' laws strongly suggests the *Daniels* Court saw no distinction between mental illness and psychotic disorder and believed the terms to be interchangeable. It is interesting to note that Michigan subsequently amended its statute to now provide: (1) the defendant must prove mental illness at the time of the offense and (2) that the defendant did not establish by a preponderance of the evidence that he or she lacked the substantial capacity to appreciate the nature and quality of wrongfulness of the conduct or to conform his or her conduct to the requirements of the law.⁹⁷

To make the “fit” noted in *Daniels*, any distinction between “psychiatric disorder” and “mental illness” could not exist. Also, the same link occurs in Michigan between a finding of guilty, but mentally ill and the consequent need for treatment. The most important point of that fit is that §§ 401(b) and 408 cannot be viewed in isolation from each other but are inextricably linked. All roads in Michigan and Delaware lead back to the synonymous nature of these terms as used in our statutes.

⁹⁶ “Sec. 36.(1) If the defendant asserts a defense of insanity in compliance with section 20a, the defendant may be found ‘guilty but mentally ill’ if, after trial, the trier of fact finds all of the following beyond a reasonable doubt:

“(a) That the defendant is guilty of an offense.

“(b) That the defendant was mentally ill at the time of the commission of that offense.

“(c) That the defendant was not legally insane at the time of the commission of that offense. M.C.L.A 768.36 (1975).

⁹⁷ M.C.L.A 768.36 (2002).

The Court must note that the current § 408(a) describes guilty, but mentally ill as a “defense.” In the landmark case of *Sanders v. State*,⁹⁸ the Supreme Court correctly held that such a verdict or finding was not a “defense.”⁹⁹ Arguably, that holding could be used to show some ambiguity in the statutory scheme for guilty, but mentally ill. But since 1990, it has not been viewed as a defense, and whether arguable or not, it does not affect the ineluctable conclusion set out above.

In *State v. Aizupitis*,¹⁰⁰ however, this Court offered to the jury a definition of psychiatric disorder as meaning any “mental or psychotic disorder recognized within the realm of psychiatry as affecting a person’s behavior, thinking, feeling or willpower.”¹⁰¹

It is unknown where the trial judge obtained that definition. It does not appear in the Criminal Code nor does it appear in the DSM-IV-TR. Dr. Mechanick testified there is no such distinction in psychiatry as this Court drew in *Aizupitis*. Perhaps the judge in *Aizupitis*, tried to assist the jury in understanding there could be a difference since the defense was not guilty by reason of insanity. That defense arises under § 401(a) and the statute uses “mental illness.” But the close analysis of the legislative history draws no

⁹⁸ 585 A.2d 117 (Del. 1990).

⁹⁹ *Id* at 130-31.

¹⁰⁰ 699 A.2d 1098 (Del. Super. 1996).

¹⁰¹ *Id* at 1104. This language is now in this Court’s pattern instructions but the source is *Aizupitis*

such distinction. When *Aizupitis* was on appeal, the issue of this Court’s definition of “psychiatric disorder” was not raised nor mentioned in the appellate decision.¹⁰²

The resolution that § 401(b) encompasses “mental illness” leads to the next issue. That issue is whether ASPD is “exempted” as a mental illness which can be the basis for a finding of guilty, but mentally ill. The resolution of that issue starts with the diagnostic criteria for ASPD contained in DSM-IV-TR, which, though quoted previously, are recited here:

Diagnostic criteria for 301.7 Antisocial Personality Disorder

A. There is a pervasive pattern of disregard for and violation of the rights of others occurring since age 15 years, as indicated by three (or more) of the following:

1. failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest
2. deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure
3. impulsivity or failure to plan ahead
4. irritability and aggressiveness, as indicated by repeated physical fights or assaults
5. reckless disregard for safety of self or others

¹⁰² *Aizupitis v. State*, 699 A.2d 1093 (Del. 1997). The definition of “psychiatric disorder” appearing in this Court’s pattern instructions comes directly from *Aizupitis*. It, too, has no other known or independent origin.

6. consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations
 7. lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another
- B. The individual is at least age 18 years.
 - C. There is evidence of Conduct Disorder with onset before age 15 years.
 - D. The occurrence of antisocial behavior is not exclusively during the course of Schizophrenia or a Manic Episode.¹⁰³

These are the diagnostic criteria (along with some explanatory pages from the DSM) which were shown to the jury. But that was not the DSM in effect when the revised § 401 and § 408 were enacted in 1982.¹⁰⁴ DSM-III was and for ASPD it provided:

Diagnostic criteria for Antisocial Personality Disorder

- A. Current age at least 18.
- B. Onset before age 15 as indicated by a history of three or more of the following before that age:
 1. truancy (positive if it amounted to at least five days per year for at least two years, not including the last year of school)
 2. expulsion or suspension from school for misbehavior
 3. delinquency (arrested or referred to juvenile court because of behavior)

¹⁰³ DSM-IV-TR, State's exhibit 178.

¹⁰⁴ 63 *Del. Laws* c. 328.

4. running away from home overnight at least twice while living in parental or parental surrogate home
5. persistent lying
6. repeated sexual intercourse in a casual relationship
7. repeated drunkenness or substance abuse
8. thefts
9. vandalism
10. school grades markedly below expectations in relation to estimated or known IQ (may have resulted in repeating a year)
11. chronic violations of rules at home and/or at school (other than truancy)
12. initiation of fights

C. At least four of the following manifestations of the disorder since age 18:

1. inability to sustain consistent work behavior, as indicated by any of the following: (a) too frequent job changes (e.g., three or more jobs in five years not accounted for by nature of job or economic or seasonal fluctuation), (b) significant unemployment (e.g., six months or more in five years when expected to work), (c) serious absenteeism from work (e.g., average of three days or more of lateness or absence per month), (d) walking off several jobs without other jobs in sight (Note: similar behavior in an academic setting during the last few years of school may substitute for this criterion in individuals who by reason of their age or circumstances have not had an opportunity to demonstrate occupational adjustment)
2. lack of ability to function as a responsible parent as evidenced by one or more of the following: (a) child's malnutrition, (b) child's illness resulting from lack of minimal hygiene standards, (c) failure to obtain medical care for a seriously ill child, (d) child's

dependance on neighbors or nonresident relatives for food or shelter, (e) failure to arrange for a caretaker for a child under six when parent is away from home, (f) repeated squandering on personal items, of money required for household necessities

3. failure to accept social norms with respect to lawful behavior, as indicated by any of the following: repeated thefts, illegal occupation (pimping, prostitution, fencing, selling drugs), multiple arrests, a felony conviction
 4. inability to maintain enduring attachment to a sexual partner as indicated by two or more divorces and/or separations (whether legally married or not), desertion of spouse, promiscuity (ten or more sexual partners within one year)
 5. irritability and aggressiveness as indicated by repeated physical fights or assaults (not required by one's job or to defend someone or oneself), including spouse or child beating
 6. failure to honor financial obligations, as indicated by repeated defaulting on debts, failure to provide child support, failure to support other dependents on a regular basis
 7. failure to plan ahead, or impulsivity, as indicated by traveling from place to place without a pre-arranged job or clear goal for the period of travel or clear idea about when the travel would terminate, or lack of a fixed address for a month or more
 8. disregard for the truth as indicated by repeated lying, use of aliases, "conning" others for personal profit
 9. recklessness, as indicated by driving while intoxicated or recurrent speeding
- D. A pattern of continuous antisocial behavior in which the rights of others are violated, with no intervening period of a least five years without antisocial behavior between age 15 and the present time (except when the individual was bedridden or confined in a hospital or penal institution).

E. Antisocial behavior is not due to either Severe Mental Retardation, Schizophrenia or manic episodes.¹⁰⁵

These diagnostic criteria are more elaborate or detailed than those in the DSM-IV-TR criteria for ASPD, but the essential features are the same.¹⁰⁶ The point is, however, that the exclusionary language in § 401(c), “repeated criminal or other antisocial conduct” captures the basic core of ASPD as set out in 1982 DSM - III and now.

Any doubt that ASPD cannot be a qualifying personality disorder was settled in *Magner v. State*,¹⁰⁷ when the Supreme Court said, “A defendant suffering from anti-social personality disorder may not assert mental illness as a defense.”¹⁰⁸ While the Supreme Court in *Sanders* said that guilty, but mentally ill was not a defense, it did in a case a year later, however, refer to it as a “defense.”¹⁰⁹ By the same token, as noted earlier, § 408 refers to guilty, but mentally ill as a “defense.” In short, whether labeled or mislabeled as a defense, the exclusionary language in *Magner* is just as valid.

It is of no moment that *Magner* used “mental illness” and not “psychiatric disorder.” For one, that would implicitly render meaningless the word “chapter” in § 401(c) as the Legislature could easily have said “except in subsection (b)” but did not do

¹⁰⁵ DSM-III, 301.70, p. 321.

¹⁰⁶ See pp. 22-23 above.

¹⁰⁷ 1998 WL 666726 (Del.).

¹⁰⁸ *Id* at *1.

¹⁰⁹ *Stansbury v. State*, 591 A.2d 188 (Del. 1991).

so. Second, it makes no sense to reach the conclusion that ASPD is excluded from § 401(a) but not § 401(b). To do so renders the last - exclusionary - sentence of § 401(c) to be meaningless, also. Courts do not exist to render statutes meaningless.

There is solid statutory support for this statement in *Magner*. The phraseology of § 401(c) manifests the General Assembly was aware of antisocial behavior by repeated criminal conduct. That such persons should not be the object of guilty, but mentally ill is manifest. Would it have been helpful to have specifically mentioned “Anti-Social Personality Disorder” in § 401(c)? Obviously, yes. But its primary diagnostic features are stated.

Dr. Mechanick testified that § 401(c) described two of the three most important elements of ASPD: repeated criminal conduct and antisocial conduct. The words “nonsocial conduct” in (c) is another way of expressing antisocial conduct. The unstated third key diagnostic criteria is lack of remorse. Dr. Mechanick saw that Cooke had none for the offenses for which he was on trial nor for his extensive prior criminal conduct. Further, psychiatry offers another, independent peg in the columns supporting § 401(c)’s language and *Magner’s* statement. Dr. Mechanick said ASPD is not treatable.

One of the two goals in 1982 and present and into the future, both in terms of statutory language and the synopsis, is that certain mental illnesses are treatable. It would be a glaring anomaly if ASPD qualified as a mental illness under § 401(b) when it is a non-treatable condition.

These are the reasons this Court was bound and compelled to affirmatively instruct the jury the ASPD is not a basis for a finding guilty of, but mentally ill.

The jury instruction on guilty, but mentally ill was the only major area of controversy in the instructions. The parties agreed to the sentence concerning voluntary intoxication which was part of the instruction.¹¹⁰ The presentation of evidence concluded on February 28, 2007. The jury was instructed on March 5, 2007, finishing up around 4:00 p.m., but it chose not to start deliberations that day. It deliberated all day March 6th but before starting, it asked for a list of all exhibits (State had 184 and the defense 21).

During its all-day deliberations on March 7th, the jury asked the following questions and was given the answers as noted:

In count 4 Burglary 1st degree #5 states the intent to commit some act which is defined in our Criminal Code as a crime. In this case, the State contends that the defendant intended to commit the crime of rape.

1) Does jury need to find defendant entered for purpose of rape? Or is any intended crime sufficient?

Answer: The defendant entered or remained unlawfully in a dwelling. A person enters or remains unlawfully in a place when he has no license or privilege to be there; that is, he does not have the permission or consent of the owner of the place to be there; and entered or remained are stated in the disjunctive. They are not the same. When either of these elements, therefore, is proven to your satisfaction beyond a reasonable doubt, this first element of this charge of burglary is established.

2) If other crimes are committed upon entering, are the sufficient to satisfy “any offense included within that offense”?

¹¹⁰ 11 *Del. C.* § 421.

Answer: The crime of rape in the first degree as charged in the indictment is the only offense you can consider.

The jury was also instructed to review the entire instruction on the elements of burglary. Interestingly, over the thirty-three years since the Criminal Code became effective, this jury's first question raised an issue of statutory construction not yet addressed explicitly, as far as this Court was aware, or could find, by any Delaware Court.

The offense of burglary in the second degree is defined as:

A person is guilty of burglary in the second degree when the person knowingly enters or remains unlawfully:

- (1) In a dwelling with intent to commit a crime therein; or
- (2) In a building and when, in effecting entry or while in the building or in immediate flight therefrom, the person or another participant in the crime:
 - a. Is armed with explosives or a deadly weapon; or
 - b. Causes physical injury to any person who is not a participant in the crime.

In an attempt to correctly answer the jury's question, the parties and the Court engaged in some research independent of each other.

The Court, as a trial attorney and in other functions, was intimately familiar with the prior law on burglary and the substantive change made when the Criminal Code became effective in 1973. The Court "went back" to that law which provided in pertinent part:

“Whoever breaks and enters ...with the intent to commit any crime therein ...”¹¹¹

The 1973 statute eliminated the element of “breaking.” Some of the anomalies of the ancient common law regarding the concept of breaking are recited in the Commentary to the Criminal Code.¹¹² In its research, the Court re-read the Commentary as it related to prior law on burglary and the change made in 1973. Regrettably, there was nothing explicit there about “or remains”. The phrase “enters or remains unlawfully,” however, is a defined one. It appears in 11 *Del. C.* § 829(d) and (e):

(d) A person “enters or remains unlawfully” in or upon premises when the person is not licensed or privileged to do so. A person who, regardless of intent, enters or remains upon premises which appear at the time to be open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated by the owner of the premises or another authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

(e) A person “enters” upon premises when the person introduces any body part or any part of any instrument, by whatever means, into or upon the premises.

This definition, too, provided (and provides) no explicit answer to the jury’s question.

That codified definition has remained unchanged since added to the Code in 1973.

¹¹¹ 11 *Del. C.* § 395 - repealed in 1973.

¹¹² The elements of the Model Penal Code in existence in 1973 expressly did not have the concept of “or remains.” Commentary, pp 248-249.

Again, as part of its research to develop an answer, the Court reviewed the Commentary to § 829. There was no explicit answer there either. One helpful part to the Commentary, however, was the statement, “It discards the archaic concept of ‘breaking.’”¹¹³ The statutory definition of “enters or remains,” was implicitly helpful, nonetheless.

To understand why, the Court reviewed Delaware case law on the crime of burglary as it existed prior to 1973. It had been Delaware law for 160 years that the specific crime the burglar intended to commit prior to or when breaking and entering had to be alleged in the indictment.¹¹⁴ This principle was restated in *State v. Minnick*.¹¹⁵ In that case the issue was whether an indictment charging burglary with the intent to commit a crime sufficiently charged burglary. This Court said it did not.¹¹⁶

Since the intent under the prior burglary jurisprudence had to be formed prior to that magic point of breaking (which at long-standing common was the crossing of some invisible line - trespass - whether or not some tangible object like a door was opened or broken), the removal of the “archaic” concept of breaking had to mean something when coupled with the new word and concept meant by “or remains.” This Court believed

¹¹³ Commentary p. 256.

¹¹⁴ *State v. Eaton*, 3 Har. Del, 554 (*Del. O & T* 1840).

¹¹⁵ 168 A.2d 93 (Del. Super. 1960).

¹¹⁶ *Id* at pp 96 - 97.

fundamental common sense meant that with these changes, (1) a person could enter lawfully, but after remaining unlawfully, form an intent to commit a crime, (2) or that it meant one entered unlawfully to commit one crime but while remaining unlawfully formed the intent to commit another. It made no sense to come to a different conclusion.

If the former law required a specific intent to be formed (and the specific crime to be charged) prior to entry, the 1973 revision to “or remains” had to cover: (1) entering lawfully, (2) but then remaining unlawfully, and (3) at that point forming (and later being charged with) a specific crime, or to mean (1) unlawfully entering with an intent to commit one crime, but (2) while unlawfully present (remaining) forming an intent to commit a different crime. This was clear because the repeal of just entering meant there was no longer that invisible line to be crossed by which time under the repealed law the intent had to be formed. From 1973 on, that intent could be formed while remaining unlawfully. Not only did common sense lead this Court to this conclusion, to have held otherwise would eviscerate “or remains” and perhaps engage in ill-advised judicial legislation. This Court was not prepared to do that.

While the precise issue may be somewhat novel, the Court readily found during its research on the question some helpful Delaware case authority. In *Miller v. State*,¹¹⁷ the Supreme Court acknowledged the disjunctive of “enters or remains.” (emphasis added). Therefore, since these words are disjunctive and since one who forms an intent to commit

¹¹⁷ 426 A.2d 842 (Del. 1981).

a specific crime at that point either entering unlawfully or remaining unlawfully (and is appropriately so charged), either of the two above scenarios apply and are quite reasonable. Neither offends but each is consistent with the statutory language. If the words are not disjunctive, what do the words enters or remains § 829 mean? And if conjunctive, that, this Court determined would necessarily mean the intent to commit the crime to be committed inside has to be formed prior to entry. In that case, “or remains” becomes meaningless.

Without knowing for sure, but based on the evidence, it is most likely the jury was asking that, in order to find Cooke guilty of this burglary charge, did it have to find he formed the intent to commit rape prior or at the point of entry. Based on the evidence recited earlier, particularly the Harmon and Cuadra burglaries, it is most likely he entered unlawfully to commit theft but once inside Bonistall’s apartment, which is not a public place and where he never had a license or privilege to be for any purpose, when confronting her, he formed the intent to rape her. When he formed that intent inside her apartment there is no doubt he had already remained unlawfully. The parties’ research offered no contradiction to how the Court answered the jury question.

The jury’s question was well posed and correctly answered.¹¹⁸

¹¹⁸ The Court, as noted, answered the jury’s questions on March 7, 2007 in a way it believed and still believes is the correct interpretation of the phrase “enters or remains.” Two months after this Court provided the jury with its answers and bases on the reasons stated, the Supreme Court decided *Dolan v. State*, 2007 WL 1366511 (Del.). Even though this Court’s answers and its reasoning for them and this portion of the sentencing decision (continued...)

On March 8, 2007 around 11:15 the jury returned its verdict finding Cooke guilty as charged of all counts.

Penalty Phase

Because of the convictions for intentional murder (Count I), felony-rape-murder (Count II), and rape first degree (Count III), a penalty hearing was mandated. The hearing began March 13, 2007. As indicated, the jury was instructed that all the guilt phase evidence was carried over and to be considered in the penalty phase.

Statutory Aggravating Circumstances

The State offered one statutory aggravating factor:

¹¹⁸(...continued)
were written prior to *Dolan*, candor, respect and intellectual honesty compel it to note the *Dolan* decision.

In *Dolan*, the Supreme Court said that the same burglary statute at issue in Cooke meant that the intent to commit a crime must be formed prior to or up to the point of entry. This is required, the *Dolan* court said, even if the original entry were illegal and the intent formed while remaining unlawfully.

Most curiously, there is no mention of *Miller*, its holding of the disjunctive nature of “enters or remains,” or any effort, of course, to distinguish it. Oddly, not even the State cited *Miller*. As one basis for its holding, the *Dolan* court noted it picked the “majority” of decisions in other states which have reached this same conclusion. But the court also relied on the pre-1973 law on burglary that the intent had to be formed prior to entry, *Dolan* citing *State v. Edell*, 183 A. 630 (Del. Gen. Sess. 1935).

With deepest respect and humility, *Dolan* cannot be squared with *Miller*. Nor does *Dolan* adequately explain the judicial neutralization of “or remains.” The law on burglary pre-1973 was substantively amended in 1973 and re-linking intent time up to “Entry” (described as “archaic” by others) as before without recognition for the charge is, at best, problematical. The factual setting in this case could not more starkly show where, most respectfully, *Dolan* is incorrectly decided. This Court, at least, for all the compelling reasons used to reach the answers given to this jury, urges reconsideration. If none, perhaps the Legislature should re-examine the burglary statutes.

The murder was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit rape in the first degree.¹¹⁹

The jury was instructed that because of its guilty verdicts on Counts II and III it had already found this statutory factor existed beyond a reasonable doubt.¹²⁰

Non-Statutory Aggravating Circumstances

The State offered these non-statutory aggravators.

1. The particular circumstances and details of the commission of the offenses set forth in the indictment.

The Court has described many of the details of Bonistall's rape and murder. It was brutal. She fought back leaving the teeth marks in a forcibly inserted mouth gag and suffered punches to the face. Cooke had to press hard on her chest to strangle the life out of her with one of her own garments. He bound her with electrical cord. The mere act of strangulation when the victim fights back, as here, discloses a prolonged - even in minutes - intent to murder. It was not an instant death via a gun shot.

He set fire in an apartment building. First, to cover up what he did to Bonistall, but second, it was in a building that was occupied by others. And, of course, he sought to throw off the police by the wall writings about drugs and KKK.

¹¹⁹ 11 *Del.C.* § 4209(e)(1)j.

¹²⁰ *Steckel v. State*, 711 A.2d 5 (Del. 1998).

Did Cuadra escape the same murderous fate by pressing 911 on her cell phone and screaming for Carolina Bianco? There is a good chance she did. The details of all of that have been set out earlier. Fortunately Cheryl Harmon was not home when Cooke broke into her apartment and stole things. And then, there were the wall writings he did in her apartment, so very-similar-to-the ones in Bonistall's apartment. Both sets of writing were intended to mislead the police.

All of this occurred in a period of over four to five days. There was more than ample evidence of this aggravating circumstance and it carries significant weight.

2. Character and propensities of the defendant.

Cooke's extensive criminal history will be covered as a separate aggravator. He has had a number of children by seven women and owes back child support to each. He cannot or chooses not to keep a steady job. He was thirty-four when these crimes were committed. In the Court's discussion of other non-statutory aggravators, there will more details on this circumstance.

There is one record among the thousand or so pages in evidence that bears special mention on this factor. It was made when Cooke was two months short of his eighteenth birthday (when he was half of his current age). Despite the lapse of time, it has some chilling, prescient, and even current value:

There is something evil about this young man. He has been uncooperative, making demands of the staff and instigating trouble. He can't understand why he is here - nothing (according to him) that he does is wrong. He has

been behind every evil thing that has happened at the shelter since he has been here. It is impossible to talk to him. His language is offensive and he has no respect for anyone. Some of my staff has refused to work while he is here. They are intimidated by his behavior as he has been assaultive to them. James' presence undermines the order of the house. He needs to be in a more secure, structured environment with psychiatric care.¹²¹

This aggravating circumstance was well established. It, too, carries substantial weight.

3. Impact of indicted crimes on Lindsey Bonistall's family.

Lindsey Bonistall's mother, father, and older sister testified. The family is devastated. Lindsey was described as warm, hilarious, and sensitive. The Bonistall family is quite extended because of the number of siblings Mr. and Mrs. Bonistall have. There were large gatherings on holidays but no more since the murder. Lindsey's older sister Kristen and Lindsey were close; Kristen expected her to be her maid of honor. She said she was "drowning" without her. When her own apartment was burglarized some time after Lindsey's death, she had a relapse and had to undertake therapy.

Mrs. Bonistall described Lindsey as a bundle of energy. She played sports, was senior class president in high school and an honor student. She had given Lindsey a guitar because she wanted to learn to play. It was the very guitar Cooke put on top of Lindsey's body with other flammables. Mrs. Bonistall said the family was "broken."

Mr. Bonistall had established a close father-daughter relationship. He described their relationship as "best friends," "confidant," and his "fashion coach." When driving

¹²¹ Defendant's exhibit 11, Salem County JINS Shelter, Progress Report dated September 20, 1988.

together, they would sing. He was a regular attendee at church and sang in the choir of their Catholic church, but has not gone to church since the murder. There is no “healing,” he said.

This non-statutory aggravating factor has been established.

4. Impact of indicted crimes upon close friends of Lindsey Bonistall.

Two of her close friends testified. One was Christine Bush, her apartment-mate who was away when this happened, and Nicole Gengaro. Their descriptions of Bonistall matched those of her parents; “smart,” “caring,” “spontaneous,” “told lots of jokes,” “bubbly,” “witty.” Bush said Bonistall was close to her father.

Bush did not go back into the apartment after the fire. She observed from outside the blackened window in Bonistall’s bedroom. She became scared when shown the wall writings. She went home for a week, but returned to the University still not feeling safe.

Both young women said that Bonistall’s murder had made them to be more sensitive and compassionate to others.

This non-statutory aggravating factor was established.

5. The defendant attempted to disparage the character of Lindsey Bonistall.

This circumstance was established in several ways. First, was in the way he described the alleged consensual sex with her, her alleged promiscuity, her alleged drug use on prior occasions, her alleged (and not substantiated by toxicology results) consumption of “wet” on May 1st, which he recited to Dr. Turner or Dr. Bernstein, or both, and to Dr. Mechanick.

During his testimony in the guilt phase, he said Bonistall was not the person they say she was, that he was set up because he had sex with Bonistall, and that Bonistall's parents did not want to accept her behavior.

It is important to note that Cooke may have made other disparaging remarks about Bonistall which (1) were made outside the jury's presence or (2) in records or things not placed into evidence. Under 11 *Del.C.* § 4209, the sentencing judge can only consider those items that were properly before the jury (which also means, of course, anything the jury was instructed to disregard cannot be considered). The point is, the Court has not based its ultimate decision or its decision that this factor was established on anything other than that which was properly before the jury. It is important to explicitly state this because of the various events during the trial.

6. The particular circumstances and details of the commission of each of the crimes for which the defendant was either convicted or adjudicated delinquent, including (but not limited to) the following:

The precise conviction or adjudications of delinquency are set out in State's trial exhibit 184 (Attachment A to this opinion), and State's penalty hearing exhibits 1P, 2P, 3P, 4P, 5P, 6P, 22P and 23P. As far as these convictions and delinquency adjudications, this non-statutory circumstance was established.

The State also produced Anna Sauer who had lived in Salem, New Jersey in 1983. Cooke, at age thirteen, threw a rock at the back of her head in an unprovoked attack.¹²² She had several months of pain and treatment. Despite seeing Cooke several times later, he never apologized.

Sauer also testified that she encountered Cooke's mother one time and that she was nasty to her. This is just one of many examples of the mother's attitude with which he had to grow up. More will be said in the discussion of the mitigating circumstances, but the Court felt it important to mention it here.

The State produced several law enforcement officers from Salem, New Jersey. Each was personally familiar with Cooke. One incident described involved drug charges in 1991 (he was twenty or twenty-one).¹²³ Cooke was arrested several times for serious drug offenses. On this occasion, after he was initially taken to the Salem City police department, he managed to escape. His mother brought him back several hours later.¹²⁴

The police who dealt with Cooke over the years in Salem described him as "a troublemaker," "belligerent," "arrogant," and "showed no respect for authority." He often resisted arrest, and there are juvenile and criminal convictions/delinquency adjudications for such.

¹²² Refer to aggravated assault adjudication in May, 1983 listed in exhibit A.

¹²³ Refer to exhibit A, adult convictions, and to State's penalty hearing exhibit 1P.

¹²⁴ Record of escape conviction is State's penalty hearing exhibit 2P.

One of his victim's was Irene Sorell, an aunt. He stole her car in 1997 (he was twenty-seven) and received a nine month jail sentence.¹²⁵ Cooke had several adult serious drug convictions. In 1997 he had "sale weight" drugs in 39 baggies on him and \$310.00.¹²⁶ In 1999 he had \$1,147.00 on him.¹²⁷

Another victim was Vicky Waller. While approaching her place of employment in Atlantic City, Bally's, around 6:20 a.m., in October, 1997, Cooke cut the strap on her pocketbook and then she and he tussled. He ran off with it but was soon caught. Her back hurt for several weeks.¹²⁸

With the testimony of the various witnesses and the records put in evidence, this circumstance was established. It is an important circumstance in the weighing process.

7. The particular circumstances and details of the commission of four home invasion burglaries committed by the defendant in June, 2005, in Atlantic City, New Jersey.

These incidents were described in detail by the various victims during the State's rebuttal portion of the guilt phase of the trial and need not be repeated here.¹²⁹ This

¹²⁵ State's penalty hearing exhibit 3P.

¹²⁶ See State's penalty hearing exhibit 4P.

¹²⁷ See State's penalty hearing exhibit 5P.

¹²⁸ The record of his conviction for this, a theft, is reflected in State's trial exhibit 184 and State's penalty hearing exhibit 6P.

¹²⁹ *Supra* pp. 40-41.

evidence was to be and could also be considered as part of the penalty phase. The guilt phase testimony described earlier established this non-statutory aggravating circumstance. It has some significance because of the violent nature of confrontations and because all of it occurred after Bonistall's murder. That temporal proximity and the nature of the acts make this an important non-statutory aggravator.

8. Acts of domestic violence committed by the defendant against Rochelle Campbell.

The evidence of this did not come from Campbell herself before the jury. It came from Dr. Turner's interviews with her when developing a background for his ultimate diagnosis. Based on that, the Court finds this circumstance established, but finds it hard, as a result, to attribute much weight.

9. The future dangerousness of the defendant.

Based on Cooke's unceasing criminal activity from adolescence to incarceration on these charges when thirty-five, there is sufficient basis for this concern.¹³⁰ It must be balanced to an extent, by the lack of significant bad behavior (with the exception of the incidents in the Fall of 2005) while in DOC custody from early June, 2005, to March, 2007, and while in New Jersey (adult) state prison. On the other hand, a pastoral

¹³⁰ See also, the quote in the section on the defendant's character, *supra* p. 71.

counselor, James Walsh,¹³¹ testified that Cooke is a “very dangerous person.” He finds the offenses in this case not surprising for Cooke in light of his violent upbringing.

Out of jail, as these crimes and the Atlantic City crimes demonstrate, there is a strong potential for future dangerousness. He is never been out of jail long before re-offending. That he would rape and murder and, just over a month later, engage in further violent conduct underscores this propensity, and the escalation to more violence and willingness to confront his victims is most worrisome.

Mitigating Circumstances

The first eight (with subparts) mitigating circumstances presented by the defense without Court annotation, alone detail significant mitigating circumstances. By necessity, they were enumerated in the guilt phase of the trial to help explain the diagnoses Doctors Turner and Bernstein reached.¹³² Even the State, at several points in the guilt phase, described Cooke’s childhood as “horrible,” “horrific.” The emotional scarring and risk for later problems are and were real. There was well-documented and frequent significant physical and emotional abuse inflicted on Cooke as a youngster.

As has been noted, there were several thousand pages of DYFS, Salem Hospital, CHOP and Juvenile Parole records put into evidence. Some records relate to one of his sisters, Elesia, and show she was often the same target of verbal and physical abuse as

¹³¹ Defendant’s penalty hearing exhibit 4P, his CV.

¹³² *Supra* pp. 18 and 24.

Cooke; in both cases, frequently by their mother, Paula Turner. Turner was nineteen when she gave birth (prematurely) to Cooke. She was a drug addict. She was quite emotionally ill-equipped to care for children and severely mistreated Cooke.

As to the mitigating circumstances the defense presented:

1. Significant physical insults and injuries suffered by James Cooke during his early childhood including but not limited to:

a. Born three months premature with a birth weight of three pounds, thirteen ounces.

This fact appears in Defendant's exhibit 5. Cooke's experts explained a premature birth and low weight can have an impact because the brain is not yet as fully developed as if he had gone to term.

b. Diagnosed with malnutrition at age four months.

This, too, is well documented.¹³³ It has an impact on physical development (size, etc.) and on brain development. It is but one, and an early one, example of Paula Turner's profound neglect of Cooke.

c. Severe burn injuries to feet and lower legs at age twenty-five months inflicted by mother's boyfriend.

¹³³ Cooke's exhibit 6A

This incident is particularly striking and upsetting. It is documented by pictures,¹³⁴ DYFS records,¹³⁵ and by CHOP records.¹³⁶ This incident has had a major influence, decidedly negative, impact on his upbringing and continues to have an adverse influence. It would be grossly understating a cliché to say it “scarred” him for life. And it is no cliché because the physical scars are real and exist now.

His mother did not seek immediate medical treatment. Eventually, Cooke did get care at CHOP. There he had frequent surgeries to repair the skin and some other damage, but 100% restoration did not occur.¹³⁷ The injuries are permanent and this is a significant mitigating circumstance because of that. It has a troublesome side, though. The physical and emotional scars are permanent and explain, in part, Cooke’s propensity for violence.

d. Multiple surgical procedures performed upon James Cooke’s feet to alleviate some of the permanent injuries sustained in the aforementioned burning incident.

CHOP hospital records substantiate this circumstance.¹³⁸ Those records also reflect occasions when Cooke came in malnourished and yet he ate well and readily while at CHOP. The records also report there were times when he screamed, was uncooperative, combative and had to be restrained. They also show there were times when he was just

¹³⁴ See Defendant’s exhibit 6 and 8A-G, the latter taken later in life.

¹³⁵ Defendant’s exhibit 6.

¹³⁶ Defendant’s exhibit 7.

¹³⁷ Defendant’s exhibit 6.

¹³⁸ Defendant’s exhibit 7.

the opposite. All of this, of course, occurred when he was just over two years to about four years old.¹³⁹

2. James Cooke was raised in an environment characterized by poverty and physical neglect during childhood and accordingly:

a. James Cooke frequently went hungry.

This mitigating circumstance is amply established in the DYFS and Juvenile Probation records.¹⁴⁰ Cooke stole to get food, he frequently showed up at school hungry. His undernourished status is even noted in the CHOP records. Some of this has been discussed earlier when reviewing his history considered by the three mental health experts.¹⁴¹

There is no question of the poverty in which he and his siblings were raised, and the neglect by his mother and her various boyfriends which compounded that destitute situation.

b. James Cooke's clothing was frequently filthy.

This circumstance is also well documented in the DYFS records.¹⁴²

This second circumstance can be amply summarized from a report when Cooke was about thirteen and half:

¹³⁹ Defendant's exhibit 7A.

¹⁴⁰ Defendant's exhibits 6 and 11, respectively.

¹⁴¹ See e.g., *supra* pp. 16-28 and 30-40.

¹⁴² Defendant's exhibit 6. See more particularly exhibit 6, Bates #001714 - at age 9; Bates #1646

On the whole James seems to be the product of a socially, culturally and materialistically deprived environment. He is essentially undersocialized, selfish, egocentric and very angry.¹⁴³

3. Unstable home environment as evidenced by the fact that James Cooke lived in twelve different homes as a child.

Cooke's half-brother, Ricky Patillo, Jr., and half-sister Eleisa Cooke testified about how they, Cooke, and the other kids lived in twelve different locations while growing up.¹⁴⁴ This mitigator was established. It also played a role in Doctor Turner's diagnosis.¹⁴⁵

4. Emotional abuse and neglect, including, but not limited to the following:

a. James Cooke's siblings were preferred because of the perception that James Cooke's birth had caused the breakup of the marriage between Paula Cooke and James Cooke, Sr.

The evidence here suggests James Cooke, Sr., upon seeing the defendant when born or shortly thereafter, led him to conclude he was not the defendant's biological father. He left, never to return. There was some testimony that, indeed, that departure and the alleged reason led to Cooke being the victim of various kinds of abuse from his siblings and/or Paula Turner, her paramours, and she showing less interest in him.

¹⁴³ Dr. Munoz report dated April 24, 1984; Defendant's exhibit 6G.

¹⁴⁴ Defendant's exhibit 9 lists them (some are listed twice) and may show more than 12.

¹⁴⁵ *Supra* p.19.

b. Repeated verbal denigration of James Cooke by his mother Paula Turner and her paramours.

It is not clear that James Cooke, Sr's abandonment was the cause of the denigration. But the testimony from Ricky Patillo, Jr., Eleisa Cooke, and the records establish this circumstance.

c. Being picked on and ridiculed by other children at school during childhood.

Again whether Cooke Sr's departure was the catalyst for this ridicule, Ricky Petillo, Jr., confirmed that the ridicule occurred. Cooke was subjected to ridicule by other students when he was placed in special education. This mitigating circumstance was established.

d. James Cooke had a childhood history of trauma and victimization without the benefit of treatment.

While Cooke received extensive treatment for his burn injuries, it was unquestionably traumatic. The DYFS records¹⁴⁶ depict some of the injuries. Other injuries are documented in those records and received no treatment. He was sexually abused at thirteen and half when in a juvenile facility.¹⁴⁷ This circumstance is thoroughly documented. It is part of the larger picture of the "horrible" childhood he endured.

5. Despite multiple interventions by the Division of Youth and Family Services, Public Health Nursing, as well as foster placements, James Cooke was never removed

¹⁴⁶ See e.g., Defendant's exhibit 6, Bates #1322.

¹⁴⁷ Defendant's exhibit 62.

from this abusive environment promptly or for long enough to escape the emotional and physical disarray that resulted.

Defendant's exhibit 6, the DYFS records of over a thousand pages clearly establish this circumstance. If anything, these records show Cooke is a "poster child" for official neglect and mismanagement. In fairness, some of the problems were at an age before he was "in the system."

6. James Cooke was diagnosed with learning disabilities, including ADD and Learning Disorder by Dr. Stephen Mechanick.

Dr. Mechanick's testimony and the DYFS records established this mitigating circumstance.

7. The absence of a stable and/or loving father figure for James Cooke, his mother had at least five different live-in boyfriends while James was a child.

It is unclear the number live-in boyfriends was established. Nevertheless there were several. It is also established there was no such father figure for Cooke. This circumstance was substantiated.

8. Inconsistent, inappropriate and often violent discipline by James Cooke's mother and her boyfriends, including, but not limited to, beatings with hoses, extension ends, belt buckles and switches.

Most of this has been already covered. The DYFS records, including photographs, the testimony of Ricky Patillo, Jr., and Eleisa Cooke detailed this mitigating circumstance. The accumulation of all this has had a profound influence on Cooke, and not a good one.

9. Various mental health professionals, including but not limited to, those who testified at trial, have diagnosed James Cooke as suffering from some form mental illness.

Cooke's extensive history of mental health exams and diagnoses have been enumerated throughout this decision. The written records support the existence of this circumstance.¹⁴⁸ The testimony of all three mental health experts who testified at trial has been set out in detail. James Walsh, the pastoral counselor who testified during the penalty phase is another who underscored the existence of this circumstance, as did Dr. Howard Stevenson, a psychologist and teacher at the University of Pennsylvania. He testified in mitigation.

10. In the summer of 2004, James Cooke experienced the death of his seven year old son, Semaj.

As stated, this mitigating circumstance was proven. There are mixed factors to this circumstance. At Semaj's death, Cooke was under a no-contact order with him and his mother. This stemmed from an assault on her. Cooke was also in support arrears, yet he was supposedly upset, according to his mental health witnesses,¹⁴⁹ with the mother's bad living conditions. This incident was about ten months prior to the rape/murder. It is difficult to gauge what consequence, in the grand scheme of later events, Semaj's death in 2004 had on Cooke, in April, May 2005.

¹⁴⁸ Defendant's exhibits 6 and 11.

¹⁴⁹ See, e.g., Dr. Turner's report dated June 26, 2006, p. 12, Defendant's exhibit 4.

There is some evidence Semaj's death justifiably upset Cooke, but it is difficult to assign value or weight to this circumstance. More will be covered on family relationships in the discussion of circumstance number twelve.

11. Notwithstanding some inconsistency in his relationships with his family members, James Cooke is loved by his mother, to the best of her ability, and siblings, and they would suffer great loss were the State to execute him.

Cooke's mother did not testify during any phase of this proceeding. Two siblings and one cousin testified: Ricky Patillo, Jr., Eleisa Cooke, and Karlen Sorrell; all of whom testified during the guilt phase. All had, as previously discussed, spoke of Cooke's trouble-plagued youth and had witnessed the unequal discipline or verbal abuse meted out to Cooke by their mother, her boyfriends, and his school mates. While inappropriate to have said so during the guilt phase, there was some apparent attachment or affection implicitly manifested by all toward Cooke. Eleisa Cooke, as the DYFS records documented, was subjected to much of the abuse Cooke was and which was out of proportion to their siblings.

Without more, however, and considering Turner's years of abuse of Cooke and her absence from the witness stand, this circumstance as it involves her is due little weight.

12. James Cooke has developed a loving relationship with his children by Rochelle Campbell. Those children would suffer great loss were the State to execute him.

During the penalty phase, a DVD was played¹⁵⁰ showing Cooke's children by Campbell speaking with him. They were in his lawyers' office and he was in jail.¹⁵¹ The youngest of the four was too young to converse (born June 2005). Several of the children seemed most anxious to speak with him. There was a caring interchange between those children and Cooke.

One reason for this to be done by video and preserved on DVD is just that: to be able to show it to me and the jury. This could not have been done if the visit was in jail. But the children's mother, Campbell, does not like taking them for such visits. She was asked only one question in the penalty phase: if the children wanted to visit their father in jail, would she take them? She said she would. But her limited role in the penalty hearing and just that one question manifest a chasm in her relationship with Cooke.

Dr. Stevenson, said that Cooke had become attached more to the children he had by Campbell than to his other children and that the relationship should continue. He said Cooke wanted to avoid having these children suffer the pain he endured as a child.

Lay witness neighbors of Cooke in Newark, who had identified him on the wanted poster, testified at trial about how they were able to do so and, thus, this evidence carried over to the guilt phase. They had seen him with his children (by Campbell) playing in

¹⁵⁰ Defendant's penalty hearing exhibit 9.

¹⁵¹ The hook up was the videoconferencing system between the Public Defender's office and the Department of Correction.

Dickey Park. Even though they also saw him playing basketball, they noticed his “tippy toe” gait. There was, therefore, “independent” corroboration of a positive relationship between Cooke and those children.

Two of the children, Tyree Campbell, age ten, and Terence Campbell, age eight, testified.¹⁵² They spoke lovingly of their father. They want to be able to visit him. Both have exchanged letters with Cooke. It is reasonably clear that Cooke’s death would have a negative affect on them.

As it would on Kwasha Whitaker, age fourteen, a son by another woman. Turner actually brings her and a half-brother (both of whom live in New Jersey) to visit with Cooke. In that Turner does this, there is a modicum of caring she may have. The children talk to him about school, as was the case with the kids and Cooke on the DVD. He gives them advice, such as, to be around good kids. These two children would like to continue their visits and would be upset if they no longer could. Dr. Stevenson testified that Cooke has the potential of giving positive feedback to his children.

Dr. Stevenson also said that Semaj’s death was a big turning point in Cooke’s life. He seemed to say that it may have motivated him to be a better parent to his children by Campbell. Walsh noted Cooke became depressed and suffered deep grief as a result of Semaj’s death. Cooke told him that instead of only selling drugs, as he had before, he started to use them and drank more.

¹⁵² Counsel noted at side bar that none of the children knew what the charges were or the only two potential penalties.

Walsh said Cooke's crimes in 2005 had to be viewed in the context of Cooke's religious "conversion" (see #15) and Semaj's death. The Court is unclear what this means as no one satisfactorily tied the impact of Semaj's death to the onset, deterioration of or anything in any of the disorders diagnosed. The Court does not doubt there was an impact on him, but it fails to see its role in the brutal rape and murder of Bonistall.

In sum, Cooke's relationship with some of his children is mitigating circumstance. Its weight is unclear because it was these children with whom he lived when he committed all of these offenses and whom he deserted several days later.

13. James Cooke has behaved well while incarcerated in the past and during his present incarceration.

Except for the "feces incident" in early September, 2005, there is no record of misbehavior while in custody on Delaware, and this is a positive. David Holman, the Delaware Correctional Center Security Superintendent, testified that most inmates act out in their first few months of incarceration. If they do not, the likelihood is greater that their later behavior will be better. The records from Cooke's adult New Jersey imprisonments reflect the same lack of discipline problems. A psychologist, Dr. Robert Haskins, performed an evaluation on Cooke while he was incarcerated in 1994 in New Jersey (Cooke would have been twenty-three). Part of his evaluation reflects the lack of problems while Cooke was incarcerated, but his entire conclusion should be stated:

CLINICAL IMPRESSION NARRATIVE: (To include a discussion of developmental history, past behavior, analysis of current and institutional behavior test results and a DSM-III-R diagnosis if relevant. Recommendations for institutional programming can also be included.)

Mr. Cooke is a twenty-three year old black male who admits he was selling CDS for profit. Background data may be found in a 2/10/93 Admission report by this writer. He has made an excellent institutional adjustment and appears to have benefitted from the punitive aspect of his incarceration. Clinically, he is seen as an inadequate, mildly sociopathic person who sold CDS for profit.

He does appear remorseful for his crime.

DX: 301.70 Anti-Social Personality Disorder.¹⁵³

14. James Cooke has helped other inmates while in prison in the past, and there is reason to believe that he would continue helping inmates in the future.

There is no real evidence of this proffered mitigating circumstance.

15. James Cooke has reconnected with his faith through his relationship with Reverend James Beardsley; and

16. Reverend Beardsley has developed a close friendship with James Cooke, so his exception by the State would cause great loss to Reverend Beardsley.

These two mitigating circumstances should be discussed together. They need to be put in context. First, it is far from clear based on the circumstances of his upbringing that Cooke had any religious faith with which to reconnect. Second, the context is that Cooke told several of the mental status experts that an older prisoner he encountered while in jail in New Jersey in 1997 helped him become religious.

¹⁵³ State's exhibit No. 183.

This experience prompted Cooke to make a number of notes in the margin of a bible and write letters to Campbell in “King James like” phraseology which Dr. Turner and Dr. Bernstein noted in their diagnoses.

Walsh, too, mentioned the role of Cooke’s religiosity. He said Cooke told him God forgives and has compassion for sinners. Walsh described other beliefs Cooke had developed from his own interpretations of the Bible. Walsh saw Cooke on six occasions from March 2006 to June 2006 and describes his religiosity as “fervent.” Despite this religiosity, Walsh described Cooke as a “very dangerous person.” ASPD, he said would be very difficult to treat and at age thirty-six, Cooke was still dangerous.

Reverend James Beardsley has seen Cooke continuously since July 2005¹⁵⁴ He testified it took a while to gain Cooke’s trust. The reverend believes that Cooke can help other inmates. He considers Cooke a friend and “like a son.” He said to execute him “would be like losing a son.”

This mitigating circumstance was established and has some weight.

17. A sentence for life in prison without the possibility of modification or reduction meant that James Cooke will spend everyday of the rest of his natural life in prison.

The thrust of this “mitigator” is that because of the circumstances of a (possible) life sentence in a first degree murder case, Cooke will serve it in near isolation with limited

¹⁵⁴ The Court wishes to express particular gratitude to Reverend Beardsley who attended most of the trial proceedings, and who, on occasion, spoke to Cooke in lock-up areas seeking to get him to behave in order he could be present in the courtroom.

privileges and visitation in the Secure Housing Unit (SHU). In part, it would be harsh and unpleasant and, implicitly, a worse and more appropriate sentence (even though the law views the death sentence as the worst), and also, such a sentence would not be easy and would be severe. He also would be isolated from society.

Holman, from the Delaware Correctional Center, explained the many limitations placed on prisoners serving such sentences. They are significant. Most of the time is spent in isolation and with little human contact. Pictures of the small cells in which these sentences are served were admitted.¹⁵⁵

The State countered by showing that over half of inmates serving first degree murder sentences are not serving their sentences in SHU but in lower levels of classification. In these levels they have more privileges, visiting privileges, and human interaction.

There is no way to predict how long Cooke would be in SHU if sentenced to life. For sure, it would be a while and it would not be pleasant.

While this “mitigator” was established, it is difficult to assign the degree of weight to it in light of the possibility of not being in SHU for the remainder of Cooke’s life.

Cooke declined to take the witness stand in the penalty phase and testify under oath. He did, however, start to offer some remarks in allocution, but his remarks became contentious in context and tone, basically contemptuous. Even with the broad parameters

¹⁵⁵ Defendant’s penalty hearing exhibits 1P, 2P, and 3P.

of allocution,¹⁵⁶ his remarks went too far. The Court and his counsel were compelled to intercede to cut it short.¹⁵⁷

Deliberations

After summations and charge on March 19th, the jury deliberated for a little over two hours in its penalty recommendation and recessed for the night. On March 20th, as it had in the guilty phase, it asked for and was given a list of all the penalty hearing exhibits (a total of thirty-five). On March 21, 2007 it returned with its verdict just before 10:30 a.m.

As instructed, because of its verdicts in the guilt phase, it found the one statutory aggravating circumstance existed beyond a reasonable doubt.

As to the two counts of murder, intentional and rape/murder, the jury unanimously recommended the Court impose the death sentence.

The Weighing Process

The weighing process is not counting the number of aggravators versus the number of mitigators.¹⁵⁸ As part of the weighing process, the Court is to give the jury's recommendation "consideration as deemed appropriate. . . in light of the particular

¹⁵⁶ *Capano v. State*, 781 A.2d 556 664 (Del. 2001).

¹⁵⁷ The Court is mindful of Cooke's right to allocute and the breadth of that right and was reluctant to curtail it for that reason. It had to, however.

¹⁵⁸ *State v. Cohen*, 604 A.2d 846, 849 (Del. 1992).

circumstances. . .”¹⁵⁹ The Court correctly instructed the jury that its recommendation would be an “important factor” in its sentencing decision.¹⁶⁰

There are a number of mitigating circumstances present. Several are compelling. Cooke was born into a very dysfunctional “family” situation of a young mother incapable of caring for him and his siblings. The State’s own description of Cooke’s childhood as “horrific” captures the essence of the prolonged physical and mental abuse to which he was subjected. But that description does not fully describe the prolonged and severe nature of that abuse and its permanent mental and physical scarring. No child should have to endure or be victimized as he was. The details of it were replete in the record and, have been extensively set out in this decision.

All of this childhood experience increased his risk of developing some kind of personality disorder. All the mental health experts who testified agreed he developed a personality disorder. They, of course, disagree on what it was or is. The jury’s guilty verdicts reflect either he had no personality disorder in April-May, 2005, or that he had ASPD which disqualifies him from a verdict of guilty, but mentally ill.

Anyone subjected to what Cooke was, as exemplified most traumatically by the burning of his feet and legs at age two, which left him physically scarred to this day, and the repeated beatings, would be left mentally damaged, too. All of this harmed his educational and socialization development.

¹⁵⁹ 11 *Del.C.* § 4209(d).

¹⁶⁰ Jury instructions. *Starling v. State*, 882 A.2d 747, 759 (Del. 2005).

To state it another way, Cooke has two intertwined mitigating circumstances: his horrible childhood and consequent mental scarring, with the development of ASPD. These circumstances carry significant weight.

There are others. He has developed some relationship with some, but not all, of his ten children. Others do not seem, however, to matter in his life. For whatever reason, he has demonstrated over a period of years disregard for his financial duties to these children. It is a cruel irony he was upset with Semaj's circumstances when his own conduct and non-support played a role in it. His inability to pay child support, in part, is due to being in jail.

Cooke does seem to have developed some religiosity over the last eight to ten years. He has read and annotated a Bible and absorbed a lot of it. But at the same time, his criminality continued despite this religious awakening. He appears, however, to have developed a meaningful friendship with Reverend Beardsley which was built around religious discussions.

Despite Cooke's statements to several of the mental health experts, there is nothing credible to indicate he knew Lindsey Bonistall before he forcibly raped, beat, and then strangled her to death. In short, she was a stranger. Even though he is developmentally undereducated, he is wise in the ways of the criminal world; he was thirty-four when he brutally strangled Bonistall.

Based on the Cuadra and Harmon incidents, it is likely he broke into Bonistall's apartment to steal something. When encountering her, his intent changed. Cuadra was likely spared the same fate barely twenty-four to thirty hours earlier because Carolina Bianco was there, and she had managed to press 911 on her cell phone which Cooke saw. After getting some of her property, he asked her to remove her clothes.

Bonistall was hit hard several times in the face. She was forcibly gagged and also tied up with the cord from an iron. For Cooke to suggest, as he did to Dr. Turner and Dr. Mechanick, that he had consensual sex is absurd (Dr. Bernstein found it incredible). He compounds it by also alternatively suggesting he got angry because she refused to have sex with him in a position he wanted.

Cooke formed the intent to and then forcibly raped Bonistall. He formed the intent to kill, also. Strangling Bonistall requires a desire to kill lasting much longer than pulling a trigger one or two times. It is particularly "up close and personal." The use of her t-shirt and pressing on her chest betrays a cold blooded viciousness. It was a slow, painful, terrifying death.

Her murder and rape is quite consistent with his antisocial personality, criminality and disregard for the rights of others. Those traits are exemplified by his choice to enter residences at night where the chances of encountering an occupant are very high. This is what he did in the Cuadra incident and a month later in Atlantic City. He, and particularly Harmon, were fortunate she was not home when he burglarized her apartment.

His actions against Bonistall were especially cruel. She was a stranger, a totally innocent victim, had done some thing provocative to him and was undeserving of being beaten, forcibly raped, and strangled to death and suffering her own “horrific” fate.

The ultimate outrage was putting bleach on her clothes, apparently trying to destroy his DNA in the process, piling objects on her in the bathtub and setting her on fire; and in an occupied apartment building. Most mercifully for her, she was dead when he did this. But this was all his effort to disguise his culpability. He had wrote intentionally misleading words on Harmon’s wall, and similar misleading words on Bonistall’s walls - before he set her on fire, made the 911 call to the Newark Police on May 2nd and the “Josh Warn” call several days later, all in days-long efforts to disguise his culpability. He likely removed the wanted poster from the Payless Store.

But his underlying criminal personality came out again a mere month later after his monstrous murder of Bonistall. And in each case he sought to and did enter a residence where there was an occupant or were occupants and got into physical confrontations with them. He does not seem to care about that.

Cooke’s adult criminal history in New Jersey prior to the Bonistall murder does not have the violence component as his juvenile history did. To that extent, that is favorable to him. But what is most disturbing is that the Bonistall rape/murder, the circumstances of the Cuadra crime and the circumstances of the four incidents in June 2005 in Atlantic City reflect an alarming return to violence. They also reflect more of a willingness to get

into violence-laden confrontations with strangers, all to steal (at least that was the probable initial intent for entering Bonistall's apartment). He is a "very dangerous person" indeed. That dangerousness is not going to go away.

The Court has also given the appropriate consideration in light of the particular circumstances to the jury's unanimous recommendation for a death sentence. As it was told, that recommendation is an important factor in the decision this Court has reached.

The Court finds by a preponderance of the evidence, after having weighed all relevant evidence in aggravation or mitigation which bears upon the particular circumstances or details of the commission of the murder and the character and propensities of Cooke, that the aggravating circumstances the Court has found to exist to outweigh the mitigating circumstances the Court has found to exist.

Conclusion

Therefore as to Counts I and II, intentional murder and felony murder, the appropriate sentence is death as to each count.

IT IS SO ORDERED.

J.

ATTACHMENT A

ATTACHMENT A

ADULT PRESENTENCE REPORT Superior Court of New Jersey Criminal Division Case Management Office UDIR-H		DEFENDANT'S NAME: COOKE, JR., JAMES E																	
		COUNTY: SALEM	PROMIS NUMBER: 97000471-001																
		INDICTMENT/ACCUSATION/COMPLAINT NO.: 97-12-00456-I	SPN NUMBER: 002273 DOCUMENT ID: SLM97000471-001S																
CONFIDENTIAL																			
This report shall remain confidential and copies thereof shall not be made nor the disclosure of the contents of such report be made to third persons except as may be necessary in subsequent court proceedings involving the sentence imposed or disposition made.																			
A.K.A.: "Scratch"		BIRTHDATE: 12/02/70	AGE: 28 SEX: <input checked="" type="radio"/> Male <input type="radio"/> Female																
RACE: Black	BIRTHPLACE: Salem, NJ	SOCIAL SECURITY NUMBER: 146-62-2984	SBI NUMBER: 588751B FBI NUMBER: 647828KA7																
ADDRESS: 8 Magnolia Street, Salem, NJ		ZIP CODE: 08079	TELEPHONE NUMBER:																
ORIGINAL CHARGES: Ct 1) Possession of CDS, Cocaine NJS2C: 35-5a(1) (3rd degree) Ct 2) Possession of CDS, Cocaine, with Intent to Distribute NJS2C: 35-5a(1) and NJS2C: 35-5b(5) (3rd degree) Ct 3) Resisting Arrest NJS2C: 29-2a (4th degree) Ct 4) Possession of CDS, Cocaine, with Intent to Distribute within a School Zone NJS2C: 35-7 (3rd degree)		FINAL CHARGES: Ct 3) Resisting Arrest NJS2C: 29-2a (4th degree) Ct 4) Possession of CDS, Cocaine, with Intent to Distribute within a School Zone NJS2C: 35-7 (3rd degree) <p style="text-align: center;">A TRUE COPY" Criminal Case Management Office Superior Court of New Jersey Salem County - Law Division</p>																	
PLEA AGREEMENT/SPECIAL FACTORS: (Pleading guilty to Cts. 3 & 4 of 97-12-00456-I and Ct. 1 of 97-10-00381-I) 3 years NJ State Prison, with 18 mo. parole disqualification on 3rd degree charge, 9 mos. S.C.J., concurrent, on 4th degree charges. Dismiss Cts. 1 & 2 of 97-12-00456-I (\$50 VCCB & \$75 SNSF each count; \$30 LEOPA; \$1,000 DEDR; \$50 FLF; loss of NJ driving privileges; mandatory Auto Theft penalties).		MANDATORY MINIMUM SENTENCE PURSUANT TO N.J.S.A. 2C: <table style="width:100%; text-align: center;"> <tr> <td><input type="radio"/> 11-3</td> <td><input type="radio"/> 11-5</td> <td><input type="radio"/> 12-2</td> <td><input type="radio"/> 13-1</td> </tr> <tr> <td><input type="radio"/> 14-6</td> <td><input type="radio"/> 20-11</td> <td><input type="radio"/> 29-6</td> <td><input type="radio"/> 35-3</td> </tr> <tr> <td><input type="radio"/> 35-4</td> <td><input type="radio"/> 35-5</td> <td><input type="radio"/> 35-6</td> <td><input checked="" type="radio"/> 35-7</td> </tr> <tr> <td><input type="radio"/> 35-8</td> <td><input type="radio"/> 43-8</td> <td><input type="radio"/> 43-7</td> <td></td> </tr> </table> <p style="text-align: center;"><input checked="" type="radio"/> Pending Charges <input type="radio"/> Detainers</p>		<input type="radio"/> 11-3	<input type="radio"/> 11-5	<input type="radio"/> 12-2	<input type="radio"/> 13-1	<input type="radio"/> 14-6	<input type="radio"/> 20-11	<input type="radio"/> 29-6	<input type="radio"/> 35-3	<input type="radio"/> 35-4	<input type="radio"/> 35-5	<input type="radio"/> 35-6	<input checked="" type="radio"/> 35-7	<input type="radio"/> 35-8	<input type="radio"/> 43-8	<input type="radio"/> 43-7	
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<input type="radio"/> 35-8	<input type="radio"/> 43-8	<input type="radio"/> 43-7																	
ARREST DATE: 06/17/97	OFFENSE DATE: 06/17/97	JUDGE'S NAME: Timothy G. Farrell																	
CONVICTION/PLEA DATE: 02/11/99	SENTENCE DATE: 04/21/99	ATTORNEY NAME: John Schwartz	TELEPHONE NUMBER: (609)935-2212																
PLEA: <input checked="" type="radio"/> PLEA <input type="radio"/> TRIAL CUSTODIAL STATUS: <input type="radio"/> JAIL <input checked="" type="radio"/> ROR <input type="radio"/> BAIL		ADDRESS: Office of the Public Defender #5 Salem Woodstown Rd. Salem, NJ 08079 <input checked="" type="radio"/> Public Defender <input type="radio"/> Private <input type="radio"/> Assigned																	
BAIL AMOUNT: \$5,000 ROR	DATE BAIL RECEIVED: 02/11/99	ASSISTANT PROSECUTOR'S NAME: Michelle R. Jeneby																	
JAIL TIME CREDIT		GAP TIME CREDIT																	
FROM(DATE): 06/17/97	TO(DATE): 06/27/97	NUMBER OF DAYS: 11	TOTAL CREDIT: 26																
FROM(DATE): 01/28/99	TO(DATE): 02/11/99	NUMBER OF DAYS: 15	TOTAL CREDIT: 59																
COMMENTS:																			
CASE SUPERVISOR: Sharon Meade Gower	DATE PREPARED: 02/25/99	TEAM LEADER: Richard T. Hogan, T.L.	DATE APPROVED: 2/25/99																

PRIOR COURT HISTORY Superior Court of New Jersey Criminal Division Case Management Office UDIR-F	DEFENDANT'S NAME: COOKE, JR., JAMES E		
	COUNTY: SALEM	PROMIS NUMBER: 97000471-001	
	INDICTMENT/ACCUSATION/COMPLAINT NUMBER: 97-12-00456-1	SPN NUMBER: 002273	DOCUMENT ID: SLM97000471-001S

DISCUSSION OF PRIOR COURT AND PENDING CHARGES:

Defendant has a rather extensive juvenile record in Salem County. On 08/03/81, at age 10, defendant was placed on 1 year of juvenile probation for charges of Criminal Mischief. Less than 4 months later, he was given a concurrent probationary term for Simple Assault. At age 12, he was given an indeterminate term at Jamesburg, suspended, and 1 year of probation on charges of Theft, Shoplifting, Aggravated Assault, Criminal Trespassing, and Violation of Probation. Those probationary terms were terminated 04/30/84 due to the defendant's incarceration. He had been committed to Jamesburg, indeterminate not to exceed 6 months, on 03/27/84 on charges of Shoplifting (2), Criminal trespassing, and V.O.P. On 12/23/86, at age 15, the defendant was placed on 1 year of juvenile probation for 8 charges, mostly property offenses, and Resisting Arrest. He apparently completed that term. On 10/20/88, he was given 1 year of probation on various assault and property offenses. Several weeks later, he received 1 year probationary terms on 4 more property offenses (Burglary & Theft). On 03/20/89, he received a 1 year juvenile probation term for a Resisting Arrest charge that occurred shortly before his 18th birthday.

As an adult, defendant was sentenced on 09/22/92 to an aggregate 4 year NJ State Prison, with 18 months of parole ineligibility, for Distribution of CDS within a School Zone and Escape. He was paroled 09/12/94 and apparently completed parole. The present matter appears to be the defendant's 3rd indictable conviction, as he is pending sentence on a 1997 Atlantic County indictment (bench warrant ordered 01/22/99).

Defendant has had convictions in municipal court for Resisting Arrest (2 charges), Criminal Trespassing, and Simple Assault.

Defendant advises that a Receiving Stolen Property case was pending in Delaware (as of date of pre-sentence interview). No disposition was reported on 1997 Philadelphia, PA theft-related charges.

PRIOR COURT HISTORY

DATE	PLACE	OFFENSE	COURT	DISPOSITION
JUVENILE:				
03/27/79	Salem County, NJ	Shoplifting	Juvenile	05/04/79: reinstated to PIC 06/04/79: dismissed
06/26/80	Salem County, NJ	Criminal Mischief	Juvenile	08/31/81: probation 1 year, attend Salem County Guidance Center; 30 hours community service to YMCA
06/30/80	Salem County, NJ	Criminal Mischief	Juvenile	08/31/81: probation 1 year, concurrent
06/30/80	Salem County, NJ	Criminal Mischief	Juvenile	08/31/81: probation 1 year, concurrent
07/23/82	Salem County, NJ	Simple Assault	Juvenile	12/13/92: probation 1 year; jail tour
(continued next page)				

PRIOR COURT HISTORY Superior Court of New Jersey Criminal Division Case Management Office UDIR-F	DEFENDANT'S NAME: <i>COOKE, JR., JAMES E</i>		
	COUNTY: <i>SALEM</i>	PROMIS NUMBER: <i>97000471-001</i>	
	INDICTMENT/ACCUSATION/COMPLAINT NUMBER: <i>97-12-00456-1</i>	SPN NUMBER: <i>002273</i>	DOCUMENT ID: <i>SLM97000471-001S</i>

PRIOR COURT HISTORY

DATE	PLACE	OFFENSE	COURT	DISPOSITION
JUVENILE (Cont'd):				
01/31/83	Salem County, NJ	Theft	Juvenile	06/21/83: Jamesburg, indet. term, suspended; probation 1 year, report to VPO, attend adolescent group at Guidance Center; jail tour; curfew as set by VPO; cooperate with DYFS
04/18/83	Salem County, NJ	Violation of Probation	Juvenile	06/21/83: probation 1 year, concurrent; 04/30/84: termination of probation due to incarceration
03/28/83	Salem County, NJ	Shoplifting	Juvenile	06/21/83: probation 1 year, concurrent; 04/30/84: termination of probation due to incarceration
02/24/83	Salem County, NJ	Criminal Trespassing	Juvenile	06/21/83: probation 1 year, concurrent; 04/30/84: termination of probation due to incarceration
05/03/83	Salem County, NJ	Violation of Probation	Juvenile	06/21/83: probation 1 year, concurrent; 04/30/84: termination of probation due to incarceration
05/03/83	Salem County, NJ	Aggravated Assault	Juvenile	06/21/83: probation 1 year, concurrent; 04/30/84: termination of probation due to incarceration
03/13/84 to 03/24/84	Salem County, NJ	1) Shoplifting 2) Criminal Trespassing 3) Shoplifting 4) Violation of Probation	Juvenile	03/27/84: committed to Jamesburg, indeterminate term, not to exceed 6 months; CFTS: \$40 VCCB; recommend transfer to Skillman paroled 12/21/84
(continued next page)				

PRIOR COURT HISTORY Superior Court of New Jersey Criminal Division Case Management Office UDIR-F	DEFENDANT'S NAME: COOKE, JR., JAMES E		
	COUNTY: SALEM	PROMIS NUMBER: 97000471-001	
	INDICTMENT/ACCUSATION/COMPLAINT NUMBER: 97-12-00456-1	SPN NUMBER: 002273	DOCUMENT ID: SLM97000471-001S

PRIOR COURT HISTORY

DATE	PLACE	OFFENSE	COURT	DISPOSITION
JUVENILE (Cont'd):				
02/09/86	Salem County, NJ	Defiant Trespassing	Family	12/23/86: probation 1 year
02/09/86	Salem County, NJ	Defiant Trespassing	Family	12/23/86: probation 1 year
02/09/86	Salem County, NJ	Resisting Arrest	Family	12/23/86: probation 1 year
02/24/86	Salem County, NJ	1) Receiving Stolen Property 2) Possession of a Weapon	Family	05/19/86: dismissed
03/24/86	Salem County, NJ	Shoplifting	Family	12/23/86: probation 1 year
04/24/86	Salem County, NJ	1) Defiant Trespassing 2) Shoplifting	Family	12/23/86: probation 1 year
04/12/86	Salem County, NJ	Shoplifting	Family	12/23/86: probation 1 year
05/11/86	Salem County, NJ	Resisting Arrest	Family	12/23/86: probation 1 year
05/11/86	Salem County, NJ	Shoplifting	Family	12/23/86: probation 1 year
05/11/86	Salem County, NJ	False Info. to LEO	Family	10/15/86: dismissed
07/02/88	Salem County, NJ	Theft	Family	02/14/89: dismissed
04/25/88	Salem County, NJ	Aggravated Assault	Family	10/26/88: probation 1 year
04/25/88	Salem County, NJ	Aggravated Assault	Family	09/21/88: dismissed
04/28/88	Salem County, NJ	Burglary	Family	11/15/88: probation 1 year
04/28/88	Salem County, NJ	Theft	Family	11/15/88: probation 1 year
05/04/88	Salem County, NJ	Burglary	Family	11/15/88: probation 1 year
05/04/88	Salem County, NJ	Theft	Family	11/15/88: probation 1 year
08/02/88	Salem County, NJ	Robbery	Family	10/26/88: dismissed
08/02/88	Salem County, NJ	Aggravated Assault	Family	10/26/88: dismissed
08/02/88	Salem County, NJ	Criminal Mischief	Family	10/26/88: dismissed
09/01/88	Salem County, NJ	Simple Assault	Family	10/26/88: probation 1 year
(continued next page)				

PRIOR COURT HISTORY Superior Court of New Jersey Criminal Division Case Management Office UDIR-F	DEFENDANT'S NAME: COOKE, JR., JAMES E		
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	INDICTMENT/ACCUSATION/COMPLAINT NUMBER: 97-12-00456-I	SPN NUMBER: 002273	DOCUMENT ID: SLM97000471-001S

PRIOR COURT HISTORY

DATE	PLACE	OFFENSE	COURT	DISPOSITION
JUVENILE (Cont'd):				
09/15/88	Salem County, NJ	Resisting Arrest	Family	03/20/89: probation 1 year. concurrent
09/15/88	Salem County, NJ	Criminal Trespass	Family	10/26/88: probation 1 year
09/19/88	Salem County, NJ	Theft	Family	11/15/88: dismissed
various dates	Salem County, NJ	Violation of Probation	Family	08/06/90: dismissed
05/06/88	Salem county, NJ	Burglary	Family	08/06/90: dismissed
05/06/88	Salem County, NJ	Theft	Family	08/06/90: dismissed
05/06/88	Salem County, NJ	Criminal Mischief	Family	08/06/90: dismissed
ADULT:				
06/30/89	Salem, NJ	Receiving Stolen Property (W975966)	Superior	06/19/91: Administratively dismissed
09/07/89	Salem, NJ	Interference with Custody (W777966)	Superior	10/26/89: Administratively dismissed
09/16/89	Salem, NJ	1) Conspiracy to Commit Robbery 2) Aggravated Assault 3) Robbery 4) Unlawful Possession of a Weapon (89-11-00525-I)	Superior	03/21/90: Not guilty at trial. all counts
02/19/92 (09/16/91 & 09/19/91 offense dates)	Salem, NJ	1) Possession of Cocaine 2) Distribution of Cocaine 3) Distribution of Cocaine within a School Zone 4) Possession of Cocaine 5) Distribution of Cocaine 6) Distribution of Cocaine within a School Zone 7) Conspiracy (92-04-00184-I)	Superior	09/22/92: Ct. 3) NJSP 4 years. to serve 18 mos. before elig. for parole; \$1,000 DEDR. \$50 FLF; \$50 VCCB; loss of NJ driving priv. 2 yrs. CFTS 216 days Cts. 1,2,4,5, & 7- dismissed paroled 09/12/94 (parole expiration 01/18/95)
02/19/92	Salem, NJ	Escape (92-04-00186-I)	Superior	09/22/92: NJSP 4 years, cc w/ 92-04-00184-I; \$50 VCCB

(continued next page)

PRIOR COURT HISTORY Superior Court of New Jersey Criminal Division Case Management Office UDIR-F	DEFENDANT'S NAME: COOKE, JR., JAMES E		
	COUNTY: SALEM	PROMIS NUMBER: 97000471-001	
	INDICTMENT/ACCUSATION/COMPLAINT NUMBER: 97-12-00456-1	SPN NUMBER: 002273	DOCUMENT ID: SLM97000471-001S

PRIOR COURT HISTORY

DATE	PLACE	OFFENSE	COURT	DISPOSITION
ADULT(Cont'd):				
11/09/95	Salem, NJ	Resisting Arrest (W19950009851712)	Municipal	05/20/96: guilty; assessed \$455 (jail time served in lieu of fine & costs)
11/09/95	Salem, NJ	Resisting Arrest (W19950009901712)	Municipal	case merged
06/17/97	Salem, NJ	1) Possession of Cocaine 2) Possession of Cocaine with Intent to Distribute 3) Resisting Arrest 4) Possession of Cocaine with Intent to Distribute within a School Zone (97-12-00456-1)	Superior	Present Matter
08/18/97 (08/14/97 offense)	Salem, NJ	Theft by Unlawful Taking of Means of Conveyance (97-10-00381-1)	Superior	Present Matter
08/18/97	Salem, NJ	a) Resisting Arrest b) Poss. Drug Paraphernalia (S19970007961712)	Municipal	08/25/97: a) guilty assessed \$505 (jail credits in lieu of fine & costs) b) dismissed
09/06/97	Philadelphia, PA	1) Theft by Deception 2) Receiving Stolen Property 3) Forgery 4) Bad Checks		Disposition unreported
10/02/97	Salem, NJ	Criminal Trespassing (S19970011711712)	Municipal	01/05/98: guilty; assessed \$441(jail credit given in lieu of fines & costs)
10/08/97	Atlantic City, NJ	1) Robbery 2) Conspiracy 3) Obstructing (97-11-002685-1)	Superior	10/01/98: 1) pled guilty to Theft by Unlaw. Taking; 01/22/99: bench warrant for failure to appear for sentencing

(continued next page)

PRIOR COURT HISTORY Superior Court of New Jersey Criminal Division Case Management Office UDIR-F	DEFENDANT'S NAME: COOKE, JR., JAMES E		
	COUNTY: SALEM	PROMIS NUMBER: 97000471-001	
	INDICTMENT/ACCUSSION/COMPLAINT NUMBER: 97-12-00456-I	SPN NUMBER: 002273	DOCUMENT ID: SLM97000471-001S

PRIOR COURT HISTORY

DATE	PLACE	OFFENSE	COURT	DISPOSITION
ADULT(Cont'd):				
01/26/98	Salem, NJ	1) Possession of Cocaine a) Possession of Drug Paraphernalia (W19980000281712; S19980000651712))	Superior Municipal	06/22/98: Ct.1) downgraded to Failure to Make Proper Disposition of CDS and remanded; a) remanded 10/26/98: 1) & a) not guilty
07/21/98	Salem, NJ	Theft by Unlawful Taking (S199800007271712)	Municipal	09/14/98: dismissed
08/06/98	Salem, NJ	Simple Assault (W199800007681712)	Municipal	09/14/98: guilty, assessed \$455 (jail served in lieu of fine & costs)
01/26/99	Delaware	Receiving Stolen Property		scheduled for 02/24/99, per defendant

***per defendant (this arrest does not appear on a 02/17/99 record check inquiry)

CASE SUPERVISOR ANALYSIS Superior Court of New Jersey Criminal Division Case Management Office UDIR-I	DEFENDANT'S NAME: COOKE, JR., JAMES E	
	COUNTY: SALEM	PROMIS NUMBER: 97000471-001
	INDICTMENT/ACCUSATION/COMPLAINT NUMBER: 97-12-00456-I	SPN NUMBER: 002273 DOCUMENT ID: SLM97000471-001S

ASSESSMENT OF FACTORS CONTRIBUTING TO PRESENT OFFENSE(2C:44-1):

Subject advised that on 06/17/97, police arrested him on an invalid warrant and found him in possession of CDS that he had picked up off the ground. Defendant indicated that he didn't really resist arrest.

Defendant related that on 08/14/97, he borrowed his aunt's car, with her permission, but that he brought it back late.

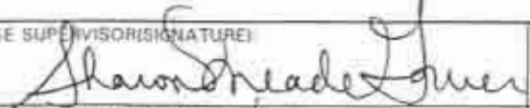

Defendant has had previous municipal court convictions for Resisting Arrest and has had one prior indictable conviction for Distribution of CDS.

ASSESSMENT OF DEFENDANT'S PERSONALITY, PROBLEMS, AND POTENTIAL IN ASSOCIATION WITH THE USE OF PROBATION AS A DISPOSITION INCLUDING AVAILABLE RESOURCES FOR POTENTIAL ASSISTANCE:

James E. Cooke is a 28 year old single male, the father of 10 children. Subject appears to be a high school graduate, with one year of college training. Defendant indicated that he has completed a job skills training program through through a public assistance agency. A 25 year Salem County resident, defendant has an occasional, sporadic employment history at best and resides in his mother's household. Defendant reports himself to be in good health and denies any personal use of illegal drugs, past or present.

Defendant has a rather lengthy juvenile record and, as a juvenile, experienced probationary terms on a variety of occasions. As a juvenile, he was once sentenced to confinement, suspended, and once sentenced to an indeterminate term at Jamesburg. As an adult, defendant has had indictable convictions for Distribution of CDS within a School Zone and Escape. He received an aggregate 4 year NJ State Prison term on those matters, with an 18 month parole disqualification. Defendant has also had municipal court convictions for Resisting Arrest (2 charges), Criminal Trespassing and Simple Assault. He is pending sentence in Atlantic County, after pleading guilty to Theft by Unlawful Taking (bench warrant ordered 01/22/99 for failure to appear at sentencing). Defendant indicates that a Receiving Stolen Property case remains pending in Delaware.

The plea agreement is probably a suitable disposition. It is hoped that the defendant will avail himself of opportunities for rehabilitation offered within the prison setting.

CASE SUPERVISOR NAME: Sharon Meade Gower	CASE SUPERVISOR(SIGNATURE): 	DATE: 2/25/99
TEAM LEADER NAME: Richard T. Hogan, T.L.	TEAM LEADER(SIGNATURE): 	DATE: 2/25/99

JAMES E. CLARK, JR.

12-02-1970 DATE OF BIRTH
S88751b S.B.I. #
2/19/92 DATE OF ARREST
04-15-1992 DATE IND/ACC FILED
05-11-1992 DATE OF ORIGINAL PLEA
XX NOT GUILTY GUILTY

SALEM COUNTY LAW DIVISION-CRIMINAL
JUDGMENT OF CONVICTION
CHANGE OF JUDGMENT
ORDER FOR COMMITMENT
INDICTMENT/ACCUSATION DISMISSED
JUDGMENT OF ACQUITTAL

DATE
XX GUILTY PLEA 08-25-1992
JURY TRIAL
NON-JURY TRIAL
DISMISSED/ACQUITTAL

ORIGINAL CHARGES

IND	92-04-00184-1	COUNT	DESCRIPTION	DEGREE	STATUTE
001	POSS SCHD I II III IV 3RD DEGR	3	2C 35-11a(1)	COCAINE, SCH. II	11
002	MANUFACTURE, DIST, DISPENSE	2	2C 35-5a(1)	COCAINE, SCH. II	11
003	MANUFACTURE, DIST, DISPENSE	3	2C 35-5a(1)	COCAINE, SCH. II	11
004	POSS SCHD I II III IV 3RD DEGR	3	2C 35-10a(1)	COCAINE, SCH. II	11
006	1000 FT. FROM SCHOOL 3	3	2C 35-7	COCAINE, SCH. II	11
007	CONSPIRACY	3	2C 5-2	COCAINE, SCH. II	11

FINAL CHARGES

COUNT	DESCRIPTION	DEGREE	STATUTE
003	MANUFACTURE, DIST, DISPENSE	3	2C 35-5a(1)

IT IS, THEREFORE, ON SEPTEMBER 22, 1992 ORDERED AND ADJUDGED THAT THE DEFENDANT IS SENTENCED AS FOLLOWS:

Count 1,2,4,5,6 and 7 dismissed.

Count 3--Committed to the Custody of the Commissioner of the Department of Corrections for 4 years. To serve 18 months before eligible for parole. \$1000.00 drug enforcement penalty, \$50.00 lab fee and \$50.00 Violent Crimes Compensation Board. Driving privileges suspended in New Jersey suspended for 2 years. Credit for 216 days.

Complaint W318989- Manufacture, distribute, dispense 2C:35-5a(1) dismissed.

Complaint W318997-Conspiracy 2C:5-2, dismissed.

A TRUE COPY
Criminal Case Management Office
Superior Court of New Jersey
Salem County - Law Division

(x) IT IS FURTHER ORDERED THAT THE SHERIFF DELIVER THE DEFENDANT TO THE APPROPRIATE CORRECTIONAL AUTHORITY.

(x) DEFENDANT IS TO RECEIVE CREDIT FOR TIME SPENT IN CUSTODY

216 days 2/19/92 to 9/22/92

TOTAL DAYS DATES (FROM/TO) DATES (FROM/TO)

TOT. CUSTODIAL TERM 4 years INSTITUTION CCDC TOT. PROBATION

V.
JAMES E. COOK JR.

12-02-1970 DATE OF BIRTH
S88751b S.B.I. #
2/19/92 DATE OF ARREST
04-15-1992 DATE IND/ACC FILED
05-11-1992 DATE OF ORIGINAL PLEA
XX NOT GUILTY GUILTY

SALEM COUNTY LAW DIVISION-CRIMINAL
XX JUDGMENT OF CONVICTION
CHANGE OF JUDGMENT
ORDER FOR COMMITMENT
INDICTMENT/ACCUSATION DISMISSED
JUDGMENT OF ACQUITTAL

DATE
XX GUILTY PLEA 08-21-1992
JURY TRIAL
NON-JURY TRIAL
DISMISSED/ACQUITTAL

ORIGINAL CHARGES

IND 92-04-00186-1 COUNT DESCRIPTION
001 ESCAPE

DEGREE STATUTE
3 2C:29-5

FINAL CHARGES

COUNT DESCRIPTION
001 ESCAPE

DEGREE STATUTE
3 2C:29-5

IT IS, THEREFORE, ON SEPTEMBER 22 1992 ORDERED AND ADJUDGED THAT THE DEFENDANT IS SENTENCED AS FOLLOWS:

Count 1: Committed to the Custody of the Commissioner of the
Department of Corrections for 4 years concurrent with
92-04-00184-1. \$50.00 Violent Crimes Compensation Board.

A TRUE COPY
Criminal Case Management Office
Superior Court of New Jersey
Salem County - Law Division

(x) IT IS FURTHER ORDERED THAT THE SHERIFF DELIVER THE DEFENDANT TO THE APPROPRIATE CORRECTIONAL AUTHORITY.
(x) DEFENDANT IS TO RECEIVE CREDIT FOR TIME SPENT IN CUSTODY

216 days 2/19/92 to 9/22/92

TOTAL DAYS DATES (FROM/TO) DATES (FROM/TO)

TOT. CUSTODIAL TERM 4 yrs. INSTITUTION CCDC TOT. PROBATION

48. 金主權保照

THE UNIVERSITY OF CHICAGO

EXAMPLE 11.1

RECEIVED 14/02/1979 C.M. 114 0287516

www.elsevier.com/locate/jmb

7. 16. 2012 - 16. 11. 2012 - 2012 - 16. 11. 2012 - 16. 11. 2012

REPRINTED FROM *THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION*, PUBLISHED WEEKLY

图 1 所示。图 1 中, 图中虚线表示在 1000 个数据点中, 有 100 个数据点落在虚线以内, 有 900 个数据点落在虚线以外。图 1 中, 图中虚线表示在 1000 个数据点中, 有 100 个数据点落在虚线以内, 有 900 个数据点落在虚线以外。

1994年11月 第20卷第6期

基团: 性: 水/油: 100/0 黏度: 10000 固含量: 100.00

JUDICIAL BY: XUE LUN JUDGE DATE: 02/11/2019

 ADM-JURY TRIAL DATE:

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Criminal Case Management Office
Superior Court of New Jersey
Salem County - Law Division

在相似情形下, 我们可得到下列不等式:

www.taylorandfrancis.com

DEPT OF CORRECTIONS, 100 SOUTH 100 WEST, SALT LAKE CITY, UTAH 84103
UNIT 1 - 9 MONTHS SALARY COMMUNITY CORRECTIONAL FACILITY CONCURRENT WITH #12-00456-1, 11 DAYS PER WEEK UNDER
PENITENTIARY, 50 NORTH 400 EAST, SALT LAKE CITY, UTAH 84103, 150 PER WEEK, 150 PER MONTH, 150 PER YEAR.
WORKING NEW CHRYSLER DRIVERS-LEASE ACADEMY CUMULATIVE TO #12-00456-1, SENTENCE IS CONSECUTIVE TO
PREVIOUS SENTENCE SERVING IN #12-00456-1.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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Figure 1

1. 能自臨場 據理以對 此種情形 亦須 注意

DOI: 10.1002/for

JAMES T. COOK, JR.

XX JUDGMENT OF CONVICTION
CHANGE OF JUDGMENT
XX ORDER FOR CONFINEMENT
INDICTMENT/ALLEGATION DISMISSED
JUDGMENT OF ACQUITTAL

TE ON BIRTH 12/02/1970 S.B. 1.4
TE ON ARREST 05/11/1999 DATE IND/ALLEGATION FILED 12/14/1999
TE OF ONE ORIGINAL PLEA WAS:
ORIGINAL PLEA 12/06/1997 XX NOT GUILTY -- GUILTY

A TRUE COPY"

JUDICATION BY: XX GUILTY PLEA DATE 02/11/1999 -- NON-JURY TRIAL DATE
-- JURY TRIAL DATE -- DISM/ACQUITTAL DATE
Criminal Case Management Office
Superior Court of New Jersey
Hudson County - Law Division

ORIGINAL CHARGES ON IND 97-10-00381-1

COUNT(S)	DESCRIPTION	VIOLATION	STATUTE
1	POSSESSING A FIREWEAPON	12C-1-1(a)(1)	CRIMINAL
2	HANDGUN OTHER THAN A RIFLE OR AR	12C-1-1(a)(2)	CRIMINAL
3	RESISTING ARREST-PURPOSELY	12C-2-1	CRIMINAL
4	LEAVING SCHOOL FROM SCHOOL	12C-2-1	CRIMINAL

ADDITIONAL CHARGES

COUNT(S)	DESCRIPTION	VIOLATION	STATUTE
1	RESISTING ARREST-PURPOSELY	12C-2-1	CRIMINAL
2	LEAVING SCHOOL FROM SCHOOL	12C-2-1	CRIMINAL

IT IS THEREFORE ON MAY 15, 1999 ORDERED AND ADJUDGED THAT THE DEFENDANT, IS SENTENCED AS FOLLOWS:

SENTENCE, TERM OF, ON 5/19/99 FOR SENTENCING, 99-10-00381-1, TERM: 18 MONTHS - 9 MONTHS RALER COUNTY CORRECTIONAL FACILITY CONCURRENT WITH COUNT 4 AND 97-10-00381-1, 25 DAYS JAIL, E TRUETT (A) 12/97-6/27/99) AND (A) 12/99-2/11/99), 30 DAYS CAP TIME CREDIT (1/15/99-6/15/99), 150 YOUNG, SSNA, 930 FEDERAL COURT 4 - 3 YEARS NEW JERSEY STATE PRISON CONCURRENT WITH 97-10-00381-1, TO SERVE 18 MONTHS BEFORE ELIGIBLE FOR PAROLE, \$1,000 FINE, 150 YOUNG, 150 YOUNG, SSNA, 24 MONTHS NEW JERSEY DRIVERS LICENSE REVOCATION CONSECUTIVE TO 97-10-00381-1. SENTENCES ARE CONSECUTIVE SENTENCE PRESENTLY SERVING BUT IN ATLANTIC COUNTY. COUNTS 1 AND 2 - DISMISSED.

IT IS ORDERED THAT THE SHERIFF DELIVER THE DEFENDANT TO THE APPROPRIATE CORRECTIONAL AUTHORITY.
DEFENDANT RECEIVES CREDIT FOR TIME SPENT IN CUSTODY

DATE 05/15/99
DEFENDANT RECEIVES CAP TIME CREDIT FOR TIME SPENT IN CUSTODY
DATE 05/15/99
CRIMINAL CASE #97-10-00381-1

DATE OF ARREST 03/05/1999 DATE IND/ACCUSATION FILED 06/09/1999 ORDER FOR COMMITMENT
 DATE OF THE ORIGINAL PLEA WAS INDICTMENT/ACCUSATION DISMISSED
 ORIGINAL PLEA NOT GUILTY GUILTY JUDGMENT OF ACQUITTAL

ADJUDICATION BY XX GUILTY PLEA DATE 12/20/1999 NON-JURY TRIAL DATE
 JURY TRIAL DATE DISM/ACQUITTED DATE

ORIGINAL CHARGES ON IND 99-06-00207-I

COUNT(S)	DESCRIPTION	DEGREE	STATUTE	
01	POSS SCHD I II III IV	3	2C:35-10A(1)	COCAINE
02	MFG/D/D OTHER I OR II/10Z 3RD	3	2C:35-5B(5)	COCAINE
03	CBS 1000 FT. FROM SCHOOL 3	3	2C:35-7	COCAINE
04	POSS/DIST WITHIN 500 FT PUB HOUSING FACILITY	3	2C:35-7.1	COCAINE

INAL CHARGES

COUNT(S)	DESCRIPTION	DEGREE	STATUTE
01	POSS SCHD I II III IV	3	2C:35-10A(1)

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 Criminal Case Management Office
 Superior Court of New Jersey
 Salem County - Law Division

IT IS THEREFORE ON DECEMBER 20, 1999, ORDERED AND ADJUDGED THAT THE DEFENDANT IS SENTENCED AS FOLLOWS:

SENTENCE 1 - 3 YEARS NEW JERSEY STATE PRISON CONCURRENT WITH 97-12-00456-I AND 97-10-00381-I, AND CONSECUTIVE TO ATLANTIC COUNTY SENTENCE, 364 DAYS GAP TIME CREDIT (4/1/99-12/20/99), \$1147 FORFEITURE, \$1000 DEDR, \$50 LAB FEE TO VCCB, \$75 SSNA, \$30 LEOPA, 6 MONTHS NEW JERSEY DRIVERS LICENSE REVOCATION CONCURRENT WITH OTHER REVOCATIONS. SEND CREDIT ON 97-12-00485-I AND 97-10-00381-I TO INCLUDE 49 DAYS GAP TIME CREDIT (4/1/99-5/19/99).
 COUNTS 2, 3 AND 4 - DISMISSED, DF-901 (5-1999-000236-1712) - DISMISSED.

IT IS ORDERED THAT THE SHERIFF DELIVER THE DEFEND. TO THE APPROPRIATE CORRECTIONAL AUTHORITY.
 DEFENDANT RECEIVES CREDIT FOR TIME SPENT IN CUSTODY

DAYS DATES
 DEFENDANT RECEIVES GAP TIME CREDIT FOR TIME SPENT IN CUSTODY

DAYS DATES
 CUSTODIAL TERM 03Y 00M 00D INSTITUTION: CARE COMMISS/CORR TOT. PROBATION:00Y 00M

THIS IS THE CHARGE RECORD OF:
JAMES E COOKE J

DOB 12/02/1970 SBI 00403972 FBI 647828KA7
ACTIVE PFA: N NON-AMENABLE: N

DATE OF ARREST	CRIME OCCURRED	COMP#/DUC/AG#/PD#/CHG	ARREST AGENCY	CRT RENDERING DISPOSITION	DISPOSITION/ SENTENCE DT
06/13/05	04/27/05	3105005490 0506009828 NC05008288 Theft Under \$1000 (Deprive Person)	NEWARK PD	NEW CASTLE COUNTY SUPERIOR COURT	Date:03/08/2007 Disposition GUILTY Sentence Date: N/A
06/13/05	04/27/05	3105005490 0506009828 NC05008288 Burglary Second Degree Dwelling	NEWARK PD	NEW CASTLE COUNTY SUPERIOR COURT	Date:03/07/2007 Disposition GUILTY Sentence Date: N/A
06/13/05	04/30/05	3105005785 0506009828 NC05008288 ROBBERY SECOND DEGREE COMPEL OWNER OR ANOTHER TO DELIVER PROPERTY	NEWARK PD	NEW CASTLE COUNTY SUPERIOR COURT	Date:03/07/2007 Disposition GUILTY Sentence Date: N/A
06/13/05	04/30/05	3105005785 0506009828 NC05008288 Burglary Second Degree Dwelling	NEWARK PD	NEW CASTLE COUNTY SUPERIOR COURT	Date:03/07/2007 Disposition GUILTY Sentence Date: N/A
06/13/05	05/01/05	3105005785	NEWARK PD	NEW CASTLE	Date:03/07/2007

THIS IS THE CHARGE RECORD OF:
JAMES E COOKE J

DOB 12/02/1970 SBI 00403972 FBI 647828KA7
ACTIVE PFA: N NON-AMENABLE: N

DATE OF ARREST	CRIME OCCURRED	COMP#/DUC/AG#/PD#/CHG	ARREST AGENCY	CRT RENDERING DISPOSITION	DISPOSITION/ SENTENCE DT
		0506009828 NC05008288 Murder First Degree Intentional ly Caused Death of Another Person		COUNTY SUPERIOR COURT	Disposition GUILTY Sentence Date: N/A
06/13/05	05/01/05	3105005785 0506009828 NC05008288 N200520041 RECKLESS ENDANGER FIRST DEGREE CREATES A SUBSTANTIAL RISK OF DEATH TO ANOTHER	NEWARK PD	NEW CASTLE COUNTY SUPERIOR COURT	Date:03/07/2007 Disposition GUILTY Sentence Date: N/A
06/13/05	05/01/05	3105005785 0506009828 NC05008288 N200520041 Burglary First Degree Dwelling Night Physical Injury to Person Not Participant	NEWARK PD	NEW CASTLE COUNTY SUPERIOR COURT	Date:08/16/2005 Disposition DISMISSED Sentence Date: N/A
06/13/05	05/01/05	3105005785	NEWARK PD	NEW CASTLE	Date:03/07/2007

THIS IS THE CHARGE RECORD OF:
JAMES E COOKE J

DOB 12/02/1970 SBI 00403972 FBI 647828KA7
ACTIVE PFA: N NON-AMENABLE: N

DATE OF ARREST	CRIME OCCURRED	COMP#/DUC/AG#/PD#/CHG	ARREST AGENCY	CRT RENDERING DISPOSITION	DISPOSITION/ SENTENCE DT
		0506009828 NC05008288 N200520041 Arson First Degree Another Person Was Present in Building		COUNTY SUPERIOR COURT	Disposition GUILTY Sentence Date: N/A
06/13/05	05/01/05	3105005785 0506009828 NC05008288 N200520041 RAPE FIRST DEGREE DURING THE COMMISSION OR ATTEMPTED COMMISSION OF CRIME	NEWARK PD	NEW CASTLE COUNTY SUPERIOR COURT	Date:03/07/2007 Disposition GUILTY Sentence Date: N/A
06/13/05	05/01/05	3105005785 0506009828 NC05008288 N200520041 Murder First Degree Intentional ly Caused Death of Another Person	NEWARK PD	NEW CASTLE COUNTY SUPERIOR COURT	Date:03/07/2007 Disposition GUILTY Sentence Date: N/A
06/08/05	04/30/05	3105005647 0506005981 NC05008288 N200520043 Criminal	NEWARK PD	NEW CASTLE COUNTY SUPERIOR COURT	Date:10/19/2006 Disposition NOLLE PROSEQUI DATA ERROR

THIS IS THE CHARGE RECORD OF:
JAMES E COOKE J

DOB 12/02/1970 SBI 00403972 FBI 647828KA7
ACTIVE PFA: N NON-AMENABLE: N

DATE OF ARREST	CRIME OCCURRED	COMP#/DUC/AG#/PD#/CHG	ARREST AGENCY	CRT RENDERING DISPOSITION	DISPOSITION/ SENTENCE DT
06/08/05	04/30/05	Mischief Under \$1000 Damage Property 3105005647 0506005981 NC05008288 N200520043 Theft Under \$1000 (Deprive Person)	NEWARK PD	NEW CASTLE COUNTY SUPERIOR COURT	Sentence Date: N/A Date:03/07/2007 Disposition GUILTY Sentence Date: N/A
06/08/05	04/30/05	3105005647 0506005981 NC05008288 N200520043 Burglary First Degree Dwelling Night Armed With Explosives or Deadly Weapon	NEWARK PD	NEW CASTLE COUNTY SUPERIOR COURT	Date:03/07/2007 Disposition GUILTY Sentence Date: N/A
06/08/05	04/30/05	3105005647 0506005981 NC05008288 N200520043 Robbery First Degree Displays What Appears to be a Deadly Weapon etc.	NEWARK PD	NEW CASTLE COUNTY SUPERIOR COURT	Date:08/16/2005 Disposition DISMISSED Sentence Date: N/A

THIS IS THE CHARGE RECORD OF:
JAMES E COOKE J

DOB 12/02/1970 SBI 00403972 FBI 647828KA7
ACTIVE PFA: N NON-AMENABLE: N

DATE OF ARREST	CRIME OCCURRED	COMP#/DUC/ AG#/PD#/CHG	ARREST AGENCY	CRT RENDERING DISPOSITION	DISPOSITION/ SENTENCE DT
01/25/99	01/25/99	0199078317 9901018199 N200520144 SHOPLIFTING UNDER \$1000 CONCEALS WARES OR MERCHANDISE	TROOP 1 STATE POLICE	NEW CASTLE COUNTY COURT OF COMMON PLEAS	Date:02/23/2006 Disposition DISMISSED Sentence Date: N/A
01/25/99	01/25/99	0199007831 9901018317 FUGITIVE FROM ANOTHER STATE	TROOP 1 STATE POLICE	JUSTICE OF THE PEACE COURT 11	Date:01/26/1999 Disposition EXTRADITED Sentence Date: 01/26/1999

--NCIC--

7L01DEIII0027203962

DE002135J

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON SID/DE00403972 PUR/C

NAME	FBI NO.	INQUIRY DATE
COOKE, JAMES	647828KA7	2007/07/03

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	PHOTO
M	B	1970/12/02	509	130	BRO	RED	N

BIRTH PLACE
NEW JERSEY

FINGERPRINT CLASS	PATTERN CLASS
AA AA AA AA 07	AU AU AU AU LS AU AU AU AU RS
AA AA AA AA 03	RS RS LS LS
	WU AU

ALIAS NAMES	
BOOKER, GEORGE LEE	COOKE, JAMES E
COOKE, JAMES E J	COOKE, JAMES EDWARD

SCARS-MARKS- TATTOOS	SOCIAL SECURITY
TAT UL ARM	165-62-2984
SC L LEG	146-62-2984
SC R LEG	146-26-2984

IDENTIFICATION DATA UPDATED 2005/06/18

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

NEW JERSEY	- STATE ID/NJ588751B
PENNSYLVANIA	- STATE ID/PA25013654
DELAWARE	- STATE ID/DE00403972
FBI	- FBI/647828KA7

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

--END--

ENFMSG ID: 027203962

--NCIC--

FL01DEIII0027203977

DE002135J

THIS INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
RECORD REQUEST FOR FBI/647828KA7. INDIVIDUAL'S RECORD WILL BE
COMPLETE WHEN ALL RESPONSES ARE RECEIVED FROM THE FOLLOWING SOURCES:

FBI	- FBI/647828KA7
NEW JERSEY	- STATE ID/NJ588751B
PENNSYLVANIA	- STATE ID/PA25013654

AN ADDITIONAL RECORD MAY BE OBTAINED FROM FILES WITHIN YOUR STATE.
END

--END--

ENFMSG ID: 027203977

--NCIC--

CR.WVFBINF00

09:42 07/03/2007 31398

09:42 07/03/2007 28776 DE002135J

TXT

HDR/2L01DEIII0027203977

ATN/JIM KOSTELNIK

***** CRIMINAL HISTORY RECORD *****

Data As Of 2007-07-03

***** Introduction *****

This rap sheet was produced in response to the following request:

FBI Number 647828KA7

Request Id

Purpose Code

C

Attention

JIM KOSTELNIK

The information in this rap sheet is subject to the following caveats:

This record is based only on the FBI number in your request-647828KA7.

Because additions or deletions may be made at any time, a new copy should be requested when needed for subsequent use. (US; 2007-07-03)

All arrest entries contained in this FBI record are based on fingerprint comparisons and pertain to the same individual. (US; 2007-07-03)

The use of this record is regulated by law. It is provided for official use only and may be used only for the purpose requested. (US; 2007-07-03)

***** IDENTIFICATION *****

Subject Name(s)

COOKE, JAMES

COOKE, JAMES EDWARD (AKA)

COOKE, JAMES E (AKA)

BOOKER, GEORGE LEE (AKA)

COOKE, JAMES E J (AKA)

Subject Description

FBI Number

647828KA7

State Id Number

NJ588751B (NJ)

PA25013654 (PA)

DE00403972 (DE)

Social Security Number

165622984

146622984

146262984

Sex

Male

Race

Black

Height

5'09"

Weight

130

Date of Birth

1970-12-02

Hair Color

Red Or Auburn

Eye Color

Brown

Fingerprint Pattern

AAAAAAAAA07AAAAAAAAA03 (FPC)

AAAAAAAAA07AAAAAAAAA03 (FPC)

Scars, Marks, and Tattoos

Code

TAT UL ARM

SC L LEG

SC R LEG

Place of Birth

NJ

Fingerprint Images

Caution

Description, Comments, and Images

, TATTOO ON UPPER LEFT ARM

, SCAR ON LEFT LEG

, SCAR ON RIGHT LEG

Citizenship

US

WANTED - CONFIRM THAT WANT IS STILL

OUTSTANDING. AGENCY-COUNTY PROSECUTOR SALEM
(NJ017023A) WANTED-NCIC #W117652016
COOKE,JAMES E JR FAMILY OFFENSE (FREE TEXT)
CASE #FV1700013699 DATE OF WARRANT 01/06/2005
NOTIFY NJ017023A COUNTY PROSECUTOR SALEM NJ
(NJ; 2005-01-06)

***** CRIMINAL HISTORY *****
***** INDEX OF AGENCIES *****

Agency FBI-CJIS DIV-CLRKSBG CLARKSBURG; WVFBNF00;

Address

1000 CUSTER HOLLOW RD
CLARKSBURG, WV 26306

Agency COUNTY PROSECUTOR SALEM; NJ017023A;

Address

94 MARKET ST
SALEM, NJ 080791914

* * * END OF RECORD * * *

--END--

ENFMSG ID: 027203977

--NCIC--

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09:42 07/03/2007 28777 DE002135J

TXT

HDR/2L01DEIII0027203977

ATN/JIM KOSTELNIK

THE FOLLOWING RECORD PERTAINS TO SID/PA25013654

SP4-137B

PENNSYLVANIA STATE POLICE CENTRAL REPOSITORY
1800 ELMERTON AVENUE HARRISBURG, PENNSYLVANIA 17110 717-787-9092

ATTN: JIM KOSTELNIK

ORI: DE002135J

USE OF THE FOLLOWING CRIMINAL HISTORY RECORD FOR *** SID/250-13-65-4 ***
REGULATED BY ACT 47, AS AMENDED. *** III - MULTIPLE STATE OFFENDER ***

DOB: 12/02/1970 SEX: M RAC: B SOC: FBI: 647828KA7

NAME: COOKE, JAMES OTN: M764683-3 PRIVATE PROSECUTION
ARRESTED: 09/06/1997 PAPEP0000 PHILADELPHIA PD OCA: C846881

CC3922	THEFT BY DECEPTION	DISPOSITION UNREPORTED
CC3925	RECEIVING STOLEN PROPERTY	
CC4101	FORGERY	
CC4105	BAD CHECKS	

F = FELONY, M = MISDEMEANOR, S = SUMMARY AND THE NUMERIC = THE DEGREE.

THIS RESPONSE IS BASED ON REQUESTER FURNISHED INFORMATION AND INCLUDES
FINGERPRINT SUPPORTED DATA EXCLUSIVELY FROM THE FILES OF THE PENNSYLVANIA
STATE POLICE REPOSITORY. IT DOES NOT PRECLUDE THE EXISTENCE OF OTHER
CRIMINAL RECORDS CONTAINED IN THE REPOSITORIES OF OTHER LOCAL, STATE OR
FEDERAL CRIMINAL JUSTICE AGENCIES.

END OF RECORD FOR SID 250-13-65-4

--END--

ENFMSG ID: 027203977

--NCIC--

CR.NJII0000

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09:42 07/03/2007 28778 DE002135J

TXT

HDR/2L01DEIII0027203977

ATN/JIM KOSTELNIK

SID/NJ588751B

HDR/2L01DEIII0027203977

ATN/JIM KOSTELNIK

THIS RECORD IS BASED ON THE SID NUMBER IN YOUR REQUEST-SID/NJ588751B

NEW JERSEY CRIMINAL HISTORY DETAILED RECORD

USE OF THIS RECORD IS GOVERNED BY FEDERAL AND STATE REGULATIONS.

UNLESS FINGERPRINTS ACCOMPANIED YOUR INQUIRY, THE STATE BUREAU OF IDENTIFICATION CANNOT GUARANTEE THIS RECORD RELATES TO THE PERSON WHO IS THE SUBJECT OF YOUR REQUEST. USE OF THIS RECORD SHALL BE LIMITED SOLELY TO THE AUTHORIZED PURPOSE FOR WHICH IT WAS GIVEN AND IT SHALL NOT BE DISSEMINATED TO ANY UNAUTHORIZED PERSONS. TO ELIMINATE A POSSIBLE DISSEMINATION VIOLATION, AND TO COMPLY WITH FUTURE EXPUNGEMENT ORDERS, THIS RECORD SHALL BE DESTROYED *IMMEDIATELY* AFTER IT HAS SERVED ITS INTENDED AND AUTHORIZED PURPOSES. ANY PERSON VIOLATING FEDERAL OR STATE REGULATIONS GOVERNING ACCESS TO CRIMINAL HISTORY RECORD INFORMATION MAY BE SUBJECT TO CRIMINAL AND/OR CIVIL PENALTIES. THIS RECORD IS CERTIFIED AS A TRUE COPY OF THE CRIMINAL HISTORY RECORD INFORMATION ON FILE FOR THE ASSIGNED STATE IDENTIFICATION NUMBER.

STATE ID NO. 588751B FBI NO. 647828KA7 DATE REQUESTED. 07/03/2007

NAME: COOKE, JAMES

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR BIRTH PLACE

M B 12/02/1970 509 130 BRO RED NJ

RECEIVING AGENCY: DE002135J U.S. CITIZEN: YES

FPC: AAAAAAAAAA07AAAAAAAAA03 AFIS NO: 2003608

III: MULTI STATE
DNA AVAILABLE: YES

ALIAS NAMES/OTHER BIRTH DATES

COOKE, JAMES E.

12/02/1970

SOCIAL SECURITY NUMBERS

165-62-2984 146-62-2984

LAST REPORTED ADDRESS/DATE : 06/21/2004

107 PENN VILLAGE D1 PENNSGROVE NJ

***** ARREST 001 *****

ARRESTED 06/30/1989 AGENCY CASE NO: 4291

AGENCY: NJ0171200 SALEM PD SALEM

001 CNT NJ2C20-7 POSSES STOLEN PROP

SUMMONS/WARRANT

PROMIS/GAVEL NO:

NO: W975966

DISPOSITION DATE: 06/19/1991

AGENCY: NJ017023A

SALEM CO PROSECUTOR

DISPOSITION: DISMISSED

001 CNT: NJ2C20-7

DEG: RECEIV STOLEN PROP

***** ARREST 002 *****

ARRESTED 09/16/1989 AGENCY CASE NO: 4291

AGENCY: NJ0171200 SALEM PD SALEM

001 CNT NJ2C12-1B AGGRAV ASSLT

001 CNT NJ2C13-4 CRIMES AGAINST PERSON

001 CNT NJ2C15-1 ROBBERY

001 CNT NJ2C5-2 ROBBERY

SUMMONS/WARRANT

PROMIS/GAVEL NO:

NO: W777966

DISPOSITION DATE: 10/26/1989

AGENCY: NJ017023A

SALEM CO PROSECUTOR

DISPOSITION: DISMISSED

001 CNT: NJ2C13-4A

DEG: CRIMES AGAINST PERSON

INDICTMENT/ACCUSATION	PROMIS/GAVEL NO:
NO: I525-89	DISPOSITION DATE: 03/21/1990
AGENCY: NJ017023J	SALEM CO SUPERIOR COURT
DISPOSITION: NOT GUILTY/ACQUITTED	
001 CNT: NJ2C15-1	DEG: 0 ROBBERY
***** ARREST 003 *****	
ARRESTED 09/22/1992	AGENCY CASE NO: 247930
AGENCY: NJ0170000	SALEM CO SHERIFF'S OFFICE
001 CNT NJ2C29-5	ESCAPE
001 CNT NJ2C35-5	DRUG OFFENSE
INDICTMENT/ACCUSATION	PROMIS/GAVEL NO:
NO: I184-92	DISPOSITION DATE: 09/22/1992
AGENCY: NJ017023J	SALEM CO SUPERIOR COURT
DISPOSITION: GUILTY	FELONY CONVICTION
001 CNT: NJ2C29-5	DEG: 0 ESCAPE
DISPOSITION: GUILTY	FELONY CONVICTION
001 CNT: NJ2C35-5	DEG: 0 DRUG OFFENSE
AGGREGATE SENTENCE	DATE: 09/22/1992
COURT: NJ017023J	SALEM CO SUPERIOR COURT
INCARCERATION: NEW JERSEY SP	
CONFINEMENT 4Y	AMOUNT ASSESSED \$ 0
INDICTMENT/ACCUSATION	PROMIS/GAVEL NO:
NO: I186-92	DISPOSITION DATE: 09/22/1992
AGENCY: NJ017023J	SALEM CO SUPERIOR COURT
DISPOSITION: GUILTY	FELONY CONVICTION
001 CNT: 2C:39-5	DEG: 3 ESCAPE
AGGREGATE SENTENCE	DATE: 09/22/1992
COURT: NJ017023J	SALEM CO SUPERIOR COURT
INCARCERATION: NEW JERSEY SP	
CONFINEMENT 4Y	AMOUNT ASSESSED \$ 50
RECEIVED 09/22/1992	AGENCY CASE NO: 247930
AGENCY: NJ011045C	NEW JERSEY STATE PRISON
***** ARREST 004 *****	
ARRESTED 06/17/1997	AGENCY CASE NO: 97004826
AGENCY: NJ0171200	SALEM PD
OFFENSE DATE: 06/17/1997	
001 CNT 2C:29-2A	RESISTING ARREST
001 CNT 2C:35-10A(1)	POSSESS CDS OR ANALOG
001 CNT 2C:35-5	MANUFACTURE/DISTRIBUTE CDS
001 CNT 2C:35-7	CDS ON SCHOOL PROPERTY
INDICTMENT/ACCUSATION	PROMIS/GAVEL NO: SLM97000471-001
NO: SLM9712004561	DISPOSITION DATE: 02/11/1999
AGENCY: NJ017023J	SALEM CO SUPERIOR COURT
DISPOSITION: GUILTY	FELONY CONVICTION
001 CNT: 2C:29-2A	DEG: 4 RESISTING ARREST
DISPOSITION: GUILTY	FELONY CONVICTION
001 CNT: 2C:35-7	DEG: 3 CDS ON SCHOOL PROPERTY
DISPOSITION: DISMISSED	
001 CNT: 2C:35-10A(1)	DEG: 3 POSSESS CDS OR ANALOG
DISPOSITION: DISMISSED	
001 CNT: 2C:35-5B(5)	DEG: 3 DISTRIBUTE NARCOTIC DRUG
AGGREGATE SENTENCE	DATE: 05/19/1999
COURT: NJ017023J	SALEM CO SUPERIOR COURT
CONFINEMENT 3Y	PAROLE INELG TRM18M
INCARCERATION: STATE PRISON	
JAIL TIME CREDIT 26D	SUSP DIVER LIC 2Y
AMOUNT ASSESSED \$ 1,330	
***** ARREST 005 *****	
ARRESTED 08/18/1997	AGENCY CASE NO: 97006679
AGENCY: NJ0171200	SALEM PD
	SALEM

OFFENSE DATE: 08/14/1997
 001 CNT 2C:20-10B TAKING MEANS OF CONVEYANCE
 001 CNT 2C:29-2A RESISTING ARREST
 001 CNT 2C:36-2 POSS OF DRUG PARAPHERNALIA
 INDICTMENT/ACCUSATION PROMIS/GAVEL NO: SLM97000639-001
 NO: SLM971000381I DISPOSITION DATE: 02/11/1999
 AGENCY: NJ017023J SALEM CO SUPERIOR COURT
 DISPOSITION: GUILTY FELONY CONVICTION
 001 CNT: 2C:20-10B DEG: 4 TAKING MEANS OF CONVEYANCE
 AGGREGATE SENTENCE DATE: 05/19/1999
 COURT: NJ017023J SALEM CO SUPERIOR COURT
 INCARCERATION: COUNTY JAIL
 CONFINEMENT 9M JAIL TIME CREDIT 13D
 SUSP DIVER LIC 1Y AMOUNT ASSESSED \$ 625
 ***** ARREST 006 *****
 ARRESTED 10/08/1997 AGENCY CASE NO: 97139219
 AGENCY: NJ0010200 ATLANTIC CITY PD ATLANTIC
 OFFENSE DATE: 10/03/1997
 001 CNT 2C:15-1 ROBBERY
 001 CNT 2C:29-3A HINDER APPREHENSION
 INDICTMENT/ACCUSATION PROMIS/GAVEL NO: ATL97004862-002
 NO: ATL971102685I DISPOSITION DATE: 10/01/1998
 AGENCY: NJ001013J ATLANTIC CO SUPERIOR CRT
 DISPOSITION: GUILTY FELONY CONVICTION
 001 CNT: 2C:20-3 DEG: 3 THEFT
 DISPOSITION: DISMISSED
 001 CNT: 2C:29-1 DEG: 4 OBSTRUCT ADMIN OF LAW
 DISPOSITION: DISMISSED
 001 CNT: 2C:5-2 DEG: 2 CONSPIRACY
 ROBBERY
 AGGREGATE SENTENCE DATE: 04/01/1999
 COURT: NJ001013J ATLANTIC CO SUPERIOR CRT
 CONFINEMENT 5Y PAROLE INELG TRM 2Y 6M
 INCARCERATION: STATE PRISON
 JAIL TIME CREDIT 97D AMOUNT ASSESSED \$ 155
 RECEIVED 04/01/1999 AGENCY CASE NO: P310214
 AGENCY: NJ011175C DEPT OF CORR CNTRAL RECEP/ASSIGN
 ***** ARREST 007 *****
 ARRESTED 03/05/1999 AGENCY CASE NO: 99002089
 AGENCY: NJ0171200 SALEM PD SALEM
 NAME USED: COOKE, JAMES E. DOB USED: 12/02/1970
 OFFENSE DATE: 03/05/1999
 001 CNT 2C:29-2A RESISTING ARREST
 001 CNT 2C:35-10A(1) POSSESS CDS OR ANALOG
 001 CNT 2C:35-5A(1) MANUFACTURE/DISTRIBUTE CDS
 001 CNT 2C:35-7 CDS ON SCHOOL PROPERTY
 001 CNT 2C:35-7.1 POSS/DIST CDS W/I 500 FT OF P
 SUMMONS/WARRANT PROMIS/GAVEL NO: SLM99000197-001
 NO: S 19990002361712 DISPOSITION DATE: 12/20/1999
 AGENCY: NJ017031J MUNICIPAL COURT SALEM
 DISPOSITION: DISMISSED
 001 CNT: 2C:29-2A(2) DEG: 0 RESISTING ARREST
 INDICTMENT/ACCUSATION PROMIS/GAVEL NO: SLM99000197-001
 NO: SLM990600207I DISPOSITION DATE: 12/20/1999
 AGENCY: NJ017023J SALEM CO SUPERIOR COURT
 DISPOSITION: GUILTY FELONY CONVICTION
 001 CNT: 2C:35-10A(1) DEG: 3 POSSESS CDS OR ANALOG
 DISPOSITION: DISMISSED
 001 CNT: 2C:35-5B(5) DEG: 3 DISTRIBUTE NARCOTIC DRUG
 DISPOSITION: DISMISSED

001 CNT: 2C:35-7 DEG: 3 CDS ON SCHOOL PROPERTY
DISPOSITION: DISMISSED
001 CNT: 2C:35-7.1 DEG: 3 POSS/DIST CDS W/I 500 FT OF
AGGREGATE SENTENCE DATE: 12/20/1999
COURT: NJ017023J SALEM CO SUPERIOR COURT
INCARCERATION: STATE PRISON
CONFINEMENT 3Y SUSP DIVER LIC 6M
AMOUNT ASSESSED \$ 1,205
***** ARREST 008 DOMESTIC VIOLENCE *****
ARRESTED 04/30/2004 AGENCY CASE NO: 2004006457
AGENCY: NJ0170800 PENNS GROVE PD SALEM
NAME USED: COOKE, JAMES DOB USED: 12/02/1970
OFFENSE DATE: 04/30/2004
001 CNT 2C:17-3A(2) CRIMINAL MISCHIEF BY TAMPERIN
** MESSAGE EXCEEDED 14400 CHARACTERS-HAS BEEN SEGMENTED BY NLETS **
** PART 1 OF 2 **
--END--
ENFMSG ID: 027203977

--NCIC--

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09:42 07/03/2007 30611

09:42 07/03/2007 28778 DE002135J

TXT

HDR/2L01DEIII0027203977

ATN/JIM KOSTELNIK

SID/NJ588751B

G

CUSTODY STATUS (AS TRACKED WITHIN NJ DOC OBCIS SYSTEM): 1

INMATE NUMBER: P310214

STATUS DATE: 03/02/04

STATUS: DISCHGD

LOCATION:

PAROLE VIOLATIONS:

ESCAPES:

ISP: N

END OF PART 1 - PART 2 TO FOLLOW

** MESSAGE EXCEEDED 14400 CHARACTERS-HAS BEEN SEGMENTED BY NLETS **

** PART 2 OF 2 **

--END--

ENFMSG ID: 027203977

--NCIC--

CR.NJIII0000

09:42 07/03/2007 30612

09:42 07/03/2007 28779 DE002135J

TXT

HDR/2L01DEIII0027203977

ATN/JIM KOSTELNIK

PART 2

THIS RECORD IS BASED ON THE SID NUMBER IN YOUR REQUEST-SID/NJ588751B

NEW JERSEY CRIMINAL HISTORY DETAILED RECORD

USE OF THIS RECORD IS GOVERNED BY FEDERAL AND STATE REGULATIONS.

UNLESS FINGERPRINTS ACCOMPANIED YOUR INQUIRY, THE STATE BUREAU OF IDENTIFICATION CANNOT GUARANTEE THIS RECORD RELATES TO THE PERSON WHO IS THE SUBJECT OF YOUR REQUEST. USE OF THIS RECORD SHALL BE LIMITED SOLELY TO THE AUTHORIZED PURPOSE FOR WHICH IT WAS GIVEN AND IT SHALL NOT BE DISSEMINATED TO ANY UNAUTHORIZED PERSONS. TO ELIMINATE A POSSIBLE DISSEMINATION VIOLATION, AND TO COMPLY WITH FUTURE EXPUNGEMENT ORDERS, THIS RECORD SHALL BE DESTROYED *IMMEDIATELY* AFTER IT HAS SERVED ITS INTENDED AND AUTHORIZED PURPOSES. ANY PERSON VIOLATING FEDERAL OR STATE REGULATIONS GOVERNING ACCESS TO CRIMINAL HISTORY RECORD INFORMATION MAY BE SUBJECT TO CRIMINAL AND/OR CIVIL PENALTIES. THIS RECORD IS CERTIFIED AS A TRUE COPY OF THE CRIMINAL HISTORY RECORD INFORMATION ON FILE FOR THE ASSIGNED STATE IDENTIFICATION NUMBER.

CRIMINAL HISTORY DIVERSION PROGRAM AND FELONY CONVICTION SUMMARY

PRE-TRIAL INTERVENTION: 000

CONDITIONAL DISCHARGE: 000

FELONY CONVICTIONS: 008

VIOLATION OF PROBATION: 000

COURT DISPOSITION INFORMATION CONTAINED IN THIS RECORD IS REPORTED ELECTRONICALLY FROM THE SENTENCING COURT. QUESTIONS CONCERNING DISPOSITION INFORMATION SHOULD BE DIRECTED TO THE MUNICIPAL OR SUPERIOR COURT LISTED ON THE RECORD. INFORMATION REGARDING CORRECTIONS TO THIS RECORD MAY BE DIRECTED TO THE SBI AT (609)882-2000, EXTENSION 2369, 2457, OR 2886.

END OF CCH RECORD

END OF RECORD

--END--

ENFMSG ID: 027203977